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SENATE RULES COMMITTEE
STATE OF CALIFORNIA



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MONDAY, AUGUST 22, 1994
10:40 A.M.

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18 MONDAY, AUGUST 22, 1994
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22 10:40 A.M.
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25 Reported by:
26

27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair
SENATOR WILLIAM CRAVEN, Vice Chair
SENATOR RUBEN AYALA
SENATOR ROBERT BEVERLY
SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DONALD J. VALPREDO, Member
California Horse Racing Board
SENATOR KEN MADDY
JACQUELINE E. SCHAFER, Chairperson
State Air Resources Control Board
CARL D. PERRY, President and Chief Executive Officer
U.S. Electricar International
JOHN R. TORRENS
PG&E
JIM GREENE
Southern California Gas
CECILE MARTIN, Deputy Director
California Electric Transportation Coalition
MICHAEL THOMAS
California Trucking Association
TOMMY ROSS
Southern California Edison
CINDY TUCK
California Council for Environmental and Economic Balance
California Grape and Tree Fruit League

APPEARANCES (Continued)

JOHN J. KENNEDY, Director of Advanced Applications
Allied Signal Aerospace

BILL NORTHROP, Executive Vice President
Independent Oil Producers Agency

RICHARD VIND, Chair and Chief Executive Officer
Regent International

NEIL KOCHLER, Partner
Parallel Products

V. JOHN WHITE
Sierra Club

TOM MARKIN, Director of California Governmental
Organizations
ARCO

EVELYN GIBSON
California Independent Oil Marketers Association

LYNNE EDGERTON, Member
State Air Resources Board

VICTORIA JONES
Southern California Gas

GORIK HOSSEPIAN
Allied Signal Aerospace

SPENCER FLOURNOY, Member
California Regional Water Quality Control Board
North Coastal Region

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CHAIRMAN LOCKYER: Senator Maddy, you wanted to take up what is item number seven for us; under appointees, number two.

SENATOR MADDY: Mr. Valpredo, yes, Mr. Chairman and Members.

Mr. Valpredo has served a term on the California Horse Racing Board a long time. He's a personal friend of mine as well as an avid person involved in horseracing as a breeder and owner, one of the few on the Horse Racing Board today that is and has been involved in all aspects of the industry. He's past chairman of the California Thoroughbred Breeders Association.

I think he's demonstrated the four years that I have observed his actions on the Horse Racing Board as being extremely objective, one trying to do reforms where reform is needed, and has been, I think, in all respects by all persons who observed from all aspects of the industry an excellent Board member.

So, I would ask that you strongly consider the fact of confirming him at this point.

CHAIRMAN LOCKYER: Thank you.

Mr. Valpredo, if you'll push the button there in front of you. You might want to start with any general comments, if you would.

MR. VALPREDO: Good morning, Mr. Chairman, Members of the Committee.

1 I'm Donald Valpredo, resident of Bakersfield,
2 California. I'm in the farming business. My family has been
3 involved in racing and raising thoroughbred horses longer than I
4 can remember.

5 I have, as Senator Maddy said, served for 23 years as
6 a director of the California Thoroughbred Breeders Association.
7 I'm a member of other thoroughbred organizations in the state
8 and also nationally, a member of the Jockey Club.

9 I have served for four years now on the California
10 Horse Racing Board. I'm currently Vice Chairman of that Board,
11 and have served on various committees.

12 I'd be very happy to answer any questions you may
13 have.

14 CHAIRMAN LOCKYER: Well, let me ask if there are
15 questions yet from Members. Senator Ayala.

16 SENATOR AYALA: First of all, Mr. Valpredo, I'm not
17 an expert on horseracing, but I keep reading about the illegal
18 use of drugs as it pertains to horses.

19 What problem does the racing industry have with
20 illegal drugs on horses?

21 MR. VALPREDO: Well, Senator, I don't think we're any
22 different than any other sporting event. There's always the
23 potential for the use of illegal drugs.

24 We monitor that very closely. We have constant
25 surveillance of the drug testing of winners and other horses
26 that are -- other competing horses in the races. We do that
27 randomly.

28 We have been -- I think California's in the forefront

1 of leading that issue, and we have become a role model for other
2 states. I'm very proud of the record that California has.

3 SENATOR AYALA: It's not out of control. It's there,
4 but you think you've got it pretty well under control?

5 MR. VALPREDO: Yes, sir.

6 SENATOR AYALA: Do you favor the issue of satellite
7 wagering?

8 MR. VALPREDO: I currently serve on the Racing
9 Board's committee, and that's a very tough issue. We are
10 monitoring what the revenues by satellite wagering, how they
11 return revenues to the state, to the associations, and to the
12 horsemen.

13 Satellite wagering seems to be coming -- the way that
14 this industry is going. Yes, I favor satellite wagering, but it
15 has to be monitored very closely.

16 SENATOR AYALA: That's all I have for now,
17 Mr. Chairman.

18 CHAIRMAN LOCKYER: Thank you, Senator.

19 Well, I guess, going back to be a bit more specific,
20 there was the controversy last year regarding several horses,
21 and the suggestion that Clenbuterol had been used. And I guess
22 the executive secretary made a decision to dismiss the matter,
23 which according to the subsequent Attorney General's report and
24 investigation, numerous Board members thought that the secretary
25 had acted inappropriately.

26 Can you help us understand what the dispute was
27 about, and what your own views are about the matter?

28 MR. VALPREDO: Yes, Senator.

1 That dispute was handled improperly from that fact
2 that when there's any sort of a positive test that comes back,
3 there's a split sample. The split samples were sent off without
4 the proper notification of the trainers and owners of the -- of
5 those animals. So, their chance for due process was then
6 negated because those split samples were used.

7 It was poorly handled, and those are some of the
8 things that we've corrected.

9 CHAIRMAN LOCKYER: Who was in error? Who made the
10 mistake in the way they --

11 MR. VALPREDO: Well, the procedural error came down
12 from the then-acting executive director.

13 CHAIRMAN LOCKYER: And that is with respect to the
14 samples, or with respect to the investigation, or decision to
15 not investigate?

16 MR. VALPREDO: Well, the procedural error of
17 mishandling of the split samples led to the complete
18 investigation that could have taken place.

19 CHAIRMAN LOCKYER: So, that wiped it out, in effect?

20 MR. VALPREDO: Yes, sir.

21 CHAIRMAN LOCKYER: Are there other questions?

22 What I've recommended to Members, just so you'll be
23 aware, is that we take testimony today on all of the various
24 appointees, take them under submission. Probably some we'll
25 take up before the Legislature adjourns for the year; others
26 don't need to be acted on until December or later, so we'll have
27 plenty of time to return to the issues.

28 Is there anyone present that wishes to make any

1 comment on the nomination of Mr. Valpredo?

2 I think that's all we want to hear at this point.
3 Thank you, sir, for your willingness to visit with us.

4 MR. VALPREDO: Thank you, Mr. Chairman, Members of
5 the Committee.

6 [Thereupon the Senate Rules
7 Committee acted upon legislative
8 agenda items.]

9 CHAIRMAN LOCKYER: Jacqueline Schafer.

10 My thought about the schedule is, we probably have
11 sufficient time to do one, break, and then come back at 1:30.
12 So, in terms of managing your time, if anyone is present, I
13 would recommend, unless you have an interest in --

14 SENATOR AYALA: Mr. Chairman, is it your wish that we
15 just hear the appointees, and not take action on them today?

16 CHAIRMAN LOCKYER: Yes, that would be my thought for
17 today, is that we just take testimony. We ask for comment, and
18 take the matters under submission until later in the week.

19 SENATOR AYALA: At some later day just for a vote
20 only.

21 CHAIRMAN LOCKYER: Probably, unless there's some new
22 startling information we learn. I would think that would make
23 sense, yes.

24 All right.

25 MS. SCHAFFER: Thank you very much, Mr. Chairman and
26 distinguished Members of the Senate Rules Committee.

27 I'm honored to be here today as Governor Wilson's
28 nominee to Chair the California Air Resources Board.

1 I'd like to begin by reviewing for you briefly my
2 prior experience in environmental policy and management for your
3 consideration, and then move on to some of the goals that I have
4 at the Air Resources Board.

5 My career reflects broad experience with
6 environmental issues relating to: federal environmental
7 legislation; military base closure and clean up, including
8 installations here in California; and administration of
9 environmental regulations as a Regional Administrator for the
10 U.S. Environmental Protection Agency. As Chairwoman-designee, I
11 have sought to foster the excellent technical and scientific
12 work that has been the tradition of the Air Resources Board,
13 while applying the lessons I've learned throughout my career on
14 managing the controversial issues that the ARB has faced in the
15 months since the Governor appointed me to the Board.

16 For example, the Board recently reviewed its 1990
17 mandate for the commercial development of zero-emission vehicles
18 and the implementation of reformulated gasoline, all with the
19 intent of addressing some of the greatest air quality challenges
20 in the nation.

21 Prior to joining the Air Resources Board, I was
22 appointed to be the first Assistant Secretary for the Navy for
23 Installations and Environment, where I was responsible for
24 policy and oversight for Navy and Marine Corps installations,
25 environmental protection and restoration, safety and
26 occupational health, and shore resources management.

27 I'm very proud of my work at the Pentagon, which
28 included establishing an alternative fuels program for

1 Department of the Navy fleet vehicles. As a result of this, the
2 Navy's Public Works Center in San Diego opened the military's
3 largest natural gas refueling station in the world last year.

4 This experience with the Navy and Marine Corps has
5 already proved to be valuable in my current assignment as Chair
6 of the Air Resources Board. For example, this year we've
7 sponsored an effort jointly with Assemblymen Cannella and
8 McPherson that will preserve air quality credits at military
9 bases so that California can get on with its finding prosperous
10 re-uses for its closing military facilities.

11 Previously, I have served on the White House Council
12 on Environmental Quality from 1984 to 1989. This is a
13 three-member advisory panel that was established by the National
14 Environmental Policy Act to draft guidelines to carry out the
15 Act, and to produce the President's annual Environmental Policy
16 Report to the Congress.

17 Prior to that, I served as the U.S. EPA Regional
18 Administrator for Region II. In that position I was responsible
19 for implementing federal environmental regulatory and grant
20 assistance programs in the states of New York, New Jersey,
21 Puerto Rico and the Virgin Islands. I also worked for a total
22 of 11 years as a staffer with the United States Senate,
23 including six years as a professional staff member to the U.S.
24 Senate Committee on Environment and Public Works. During that
25 time, I worked extensively on environmental issues, including
26 the Clean Air Act and the Clean Water Act.

27 Part of my role as Chair of the Air Resources Board
28 is to make sure we don't lose touch with the regulated

1 community, both industry and individuals. We need not only to
2 encourage the most forward-looking technology to control air
3 pollution, but also to understand their practical impacts on
4 those who are affected by our regulations. To make great
5 strides environmentally, as we have in the past, we must help to
6 rebuild California's economy so that it can support industry in
7 making the investments in innovative environmental technology
8 for which our state is already so well noted.

9 In closing, I'd like to say that I have a strong
10 appreciation of the relationship between a healthy environment
11 and a sound economy. We have a lot of work to do in both areas,
12 and we can only do it by recognizing that environmental and
13 economic goals must work in tandem. The status quo isn't going
14 to clean up the air. We also need to harness market forces to
15 achieve our goals in the future, and we are beginning to explore
16 effective ways to accomplish this.

17 California has set high standards for itself and has
18 been bold in leading the nation in environmental improvement. I
19 am committed to continuing that tradition.

20 I appreciate the attention of the Committee this
21 morning.

22 CHAIRMAN LOCKYER: Thank you very much. Thank you
23 for your introduction.

24 I'd like to have you comment for a moment on the FIP,
25 and what actions you would anticipate from the state in response
26 to the deadlines that are running.

27 MS. SCHAFER: The FIP is the Federal Implementation
28 Plan. It is a leftover requirement from the 1987 -- the 1977,

1 excuse me, Clean Air Act.

2 When the 1990 Act amendments were adopted by the
3 Congress, there was some expectation that the FIP requirement --
4 that is, the federal intervention in planning in California --
5 would be removed. However, under a court order in the Ninth
6 Circuit in San Francisco, the interpretation was that EPA had to
7 proceed with the FIP. EPA really did not want to do that, but
8 under court order agreed to a deadline of February 14, 1994 to
9 prepare the Federal Implementation Plan, and that would become
10 final in February, 1995.

11 At the same time, the Federal Clean Air Act requires
12 California, as it does all other states which have areas that
13 are not in full attainment with the air quality standards, to
14 prepare a State Implementation Plan. Unfortunately, having to
15 proceed with two plans simultaneously, both of which are
16 intended to achieve very aggressive emission reductions, has
17 required duplication of effort and created some confusion among
18 our regulated community.

19 What the state is trying to do, and what we have done
20 in the past, is to make sure that we have the strongest, most
21 forward-looking, technology forcing programs on the books that
22 will allow us to reduce emission in a cost effective manner.

23 It's important to note that underlying the federal
24 rules are their rule that the State of California has adopted
25 over many years: our low emission or zero emission vehicle
26 program, and our reformulated gasoline program.

27 EPA's comment period ends on August 21. We have, for
28 our part, been developing, through a series of symposia,

1 innovative and alternative control technologies that we might
2 also include in our State Implementation Plan, which must be
3 submitted to EPA later this year. We are working prodigiously
4 with the local districts, because our planning process in
5 California builds from the bottom-up. The local districts
6 develop plans, and we have been working in cooperation with them
7 to develop emissions inventories, modeling information, and they
8 will take the first step in proposing the local air quality
9 management plans for us to review. We will continue to be
10 engaged in this process between now and the end of the year. It
11 is highest priority at the California Air Resources Board, to
12 complete our State Implementation Plan in a timely manner, and
13 make a presentation to EPA that will satisfy the requirements of
14 federal law.

15 CHAIRMAN LOCKYER: You mean by a week from Wednesday?

16 MS. SCHAFER: No. The deadline for the State
17 Implementation Plan is November 15, and there is an 18-month
18 period after that to make additional demonstrations.

19 CHAIRMAN LOCKYER: With respect to the FIP
20 requirement, the feds' comment period ends at the end of the
21 month?

22 MS. SCHAFER: Yes, the federal comment period before
23 the plan they introduced in February.

24 CHAIRMAN LOCKYER: Are you contemplating some --

25 MS. SCHAFER: We will be making comments on the
26 federal plan; however, our first responsibility, and EPA has
27 acknowledged this as well, is for us to move ahead in an
28 expeditious manner to develop the State Implementation Plan,

1 because the expectation is that the state plan is the one that
2 will prevail at the end of the day.

3 CHAIRMAN LOCKYER: It certainly will if you get it
4 done.

5 MS. SCHAFER: Absolutely, and if we do it right.
6 That's very important also.

7 CHAIRMAN LOCKYER: So, it would be your thought that
8 it's unnecessary to respond in this cycle to FIP defects?

9 MS. SCHAFER: We would expect --

10 CHAIRMAN LOCKYER: That is, you have until the end of
11 the month to comment on the FIP. We're not doing that?

12 MS. SCHAFER: We will be commenting on it. However,
13 the notion of coming up with a state plan is one that we have
14 several more months for, and we are working very hard with the
15 local districts to do that. Our goal is --

16 CHAIRMAN LOCKYER: In February?

17 MS. SCHAFER: The statutory deadline is November 15,
18 plus there is a period of 18 months after that to make
19 additional demonstrations of completeness, and things like that.

20 CHAIRMAN LOCKYER: But so far, there is no state
21 response or critique of the FIP?

22 MS. SCHAFER: The concentration that I have been
23 making is to develop a State Implementation Plan.

24 Keep in mind that the federal plan has as its basis,
25 as its foundation, emissions reductions that are the result of
26 the California regulatory program, and has been for many, many
27 years. These are additional measures that the EPA has proposed
28 in order to reach attainment.

1 We are developing regulations. We are working with
2 the community that is to be regulated from the bottom-up to come
3 up with things that are practical for California and that will
4 lead to genuine reductions in emissions in the areas that are
5 not yet in attainment.

6 CHAIRMAN LOCKYER: I'm sorry, but that seemed to be a
7 nonanswer.

8 I'm trying to understand, is there a response
9 anticipated by the end of the month to defects in the FIP?

10 MS. SCHAFER: We will have comments on the FIP. We
11 will point out where we think that the FIP is impractical for
12 implementation in California.

13 But the constructive response that we are expected to
14 make under the Clean Air Act is to develop our own State
15 Implementation Plan, which is due at the end of this year.

16 CHAIRMAN LOCKYER: Right, and can you anticipate what
17 the criticisms will be? I assume there'll be some written
18 communication that will go to the federal government, pointing
19 out defects in the FIP?

20 MS. SCHAFER: Let me give you some examples.

21 The Federal Implementation Plan addresses sources
22 that have not been traditionally as heavily controlled as other
23 sources. We have done an enormous amount in light duty
24 vehicles, for example, and the fuels that are used in those
25 emissions. We have done -- in those vehicles. We have done an
26 enormous amount for stationary sources in California.

27 There are some sources that we are -- it would be a
28 stretch to achieve technologically, but we are working with the

1 regulated community to find out exactly, and with engine
2 manufacturers, to find out exactly what would work best.

3 Right now, EPA's Federal Implementation Plan suggests
4 that a standard of 1.5 grams of NOx per brake horse power hour
5 is beyond is the capability of the technology to achieve in the
6 time frame required. It would require alternative fuels, such
7 as natural gas, to accomplish, and it would exclude the use of
8 diesel fuel in heavy duty engines and in off-road applications
9 such as construction and farm equipment.

10 We're very concerned that it's not practical. And
11 one of the reasons we're concerned is that if the users of those
12 engines do not meet the standards in the time that EPA requires,
13 a penalty will be imposed, a fee will be imposed, and that would
14 add up their cost of doing business, will put them at a
15 competitive disadvantage with other states, and will not help
16 California's economic recovery. In fact, it will probably end
17 it sooner than later.

18 What we're looking at with the engine manufacturing
19 organizations is how well we can do using diesel in our -- in
20 the machinery that we need to use in California, where we have
21 the infrastructure and the ability to service these engines.
22 And we expect that we will be establishing a range of
23 regulations, and we'll be working with the U.S. EPA, since they
24 have considerable authority under the Clean Air Act, which is,
25 the states are pre-empted from adopting regulations that will
26 meet these standards through a federal mandate.

27 We expect that we should be able to continue to use
28 diesel-powered engines here in California, even though they will

1 be cleaner than anyone has ever attempted to make them before.
2 It's a stretch. It is technology forcing; however, we think we
3 can do it, working with the industry and the regulated
4 community.

5 CHAIRMAN LOCKYER: It's your view that the emissions
6 standard expected to be met can be obtained in alternative ways?

7 MS. SCHAFER: We certainly have a big job in
8 California, both the FIP and the SIP both have to achieve
9 enormous reductions in emissions in order to meet the federally
10 mandated deadlines. There's no question about that.

11 The question is how we go about doing that, and I
12 think that the Air Board has a long tradition of pushing,
13 mandating technology that is practical to achieve but that
14 really pushes beyond the edge of what we have been able to
15 accomplish easily in the past. We intend to continue that
16 focus, and I think that we will be successful in demonstrating
17 our ability to attain the national standards in the time frame
18 required.

19 CHAIRMAN LOCKYER: How would you sketch the likely
20 means to obtain, meet, those standards?

21 MS. SCHAFER: As I mentioned, the imposition of
22 technology forcing regulations in sectors where we have not
23 heretofore regulated.

24 CHAIRMAN LOCKYER: What would those be?

25 MS. SCHAFER: And that would be far-reaching NO^x
26 controls for heavy-duty engines, both on-road and off-road
27 construction and off-road farm sources, for example.

28 We certainly expect that our low emission and zero

1 emission vehicle program will be successfully implemented over
2 the years, and that this will bring about the reductions in
3 emissions that we also expect.

4 And finally, in-use habits of people. We'd like to
5 see much more turnover of older vehicles, get them off the road
6 in connection with the smog check program that this Legislature
7 worked with the Governor earlier this year to enact improvements
8 in.

9 We think the combination of better controls over
10 sources that have not historically been controlled, better
11 controls over those which we have the best standards in the
12 world for in terms fuels and engines, and in-use controls that
13 will help us to make sure that we accelerate the introduction of
14 the newest technologies into the fleets and continue on the
15 downward slope that we have historically enjoyed here as a
16 result of our clean fuels program, clean fuels and clean cars
17 program.

18 CHAIRMAN LOCKYER: How would you think the
19 initiatives and enforcement activities that you've described are
20 different than those contemplated by the FIP?

21 MS. SCHAFER: As I mentioned before, the FIP is
22 largely founded on a punitive program of emission fees. The
23 standards are set for a variety of categories which are
24 difficult to meet with any certainty in the time frame required.
25 If those are not met, a series of fees is imposed on the
26 industries, and we're afraid that that will merely have the
27 effect of having people hang on to older equipment for a longer
28 period of time, or, if they can operate outside of California,

1 we're afraid that they may move operations outside the state in
2 order to escape standards which are imposed on California
3 sources and not on other national sources with which they
4 compete.

5 An example is the \$10,000 a ton emission charge for
6 NOx on shipping that's brought in from Los Angeles and Long
7 Beach Ports. That would certainly make it difficult for those
8 people to continue in business at those locations, and they
9 would, presumably, move to other ports, either to our north or
10 south.

11 CHAIRMAN LOCKYER: I happen to agree, but what would
12 be your alternative to, let's just say, shipping emissions that
13 somehow is superior to the fee or more likely to cause changes
14 of behavior?

15 MS. SCHAFFER: We would like to see EPA adopt national
16 standards where they have that authority so that all of these
17 sources are treated equally, and that we would work with the
18 local governments in adopting operational controls and
19 requirements so that we will minimize the emissions while they
20 were in the ports and areas that would adversely affect the air
21 quality of the people in Southern California.

22 CHAIRMAN LOCKYER: Let me mention, and your staff may
23 have already researched this, but Pasco, the steel manufacturing
24 facility on the Carquinez Straits, was required by the Bay Area
25 Air District to reduce NO^x emissions rather substantially in
26 order to dock in the Bay Area.

27 They found that things, like, they've retrofitted the
28 ships, but separate from that, which was expensive, separate

1 from that, they've found that most of the problem comes from
2 running the engines while they're at dock because they don't
3 have alternative power sources, and on-pier electrical
4 generation and so on seemed to be the solution that worked.
5 That seems to be an easy one to do in L.A. to avoid a lot of the
6 fines and difficulties.

7 MS. SCHAFER: Going cold iron, as they say, with
8 military ships is done, and of course, that actually saves
9 money, too, so that there are alternatives.

10 And our job is to work with the regulated community
11 and the local districts to find out the most practical solutions
12 and include those in our State Implementation Plan. And I think
13 we'll be successful in doing that.

14 CHAIRMAN LOCKYER: Senator Ayala.

15 SENATOR AYALA: I have a question or two.

16 Ms. Schafer, are you aware of the proposals made by
17 the Los Angeles Mayor, Richard Riordan, to replace the pollution
18 controls in urban Los Angeles with new controls in the inland
19 areas, such as controls on dairy farms and dust from farming and
20 construction? Are you aware of that proposal?

21 MS. SCHAFER: I'm aware that the City of Los Angeles
22 has an alternative which was presented to the local air quality
23 management board in Southern California last week. As a result
24 of his presentation, and testimony of other people, it's clear
25 that the South Coast wants to take another look at its own
26 regulations.

27 With respect to the question that you're raising, I
28 have the same answer as I did for the Chairman. There are some

1 proposals and some plans that are just not practical, and --

2 SENATOR AYALA: And that's one of them.

3 MS. SCHAFER: An aspect of the Los Angeles plan,
4 although there are probably a number of good features to the
5 plan as they propose it, there are aspects which are
6 impractical. And we have dedicated some of the best people, top
7 staffers, at the Air Resources Board to work with the South
8 Coast Air Quality Management District and the City of Los
9 Angeles over the period of the next month to work out a local
10 plan which is soundly based scientifically, which meets the EPA
11 requirements for submittal in the fall, and which also is the
12 most cost effective and practical way of getting the emissions
13 and reductions that we need to do.

14 SENATOR AYALA: Did the ARB participate in the
15 development of the Mayor's proposal?

16 MS. SCHAFER: No, we had not done that, but we intend
17 to participate with the South Coast in their review of the
18 Mayor's proposal, as well as the review of their own proposal.
19 And we hope that that will lead to a stronger plan coming to the
20 Air Resources Board for our review in another month.

21 SENATOR AYALA: But you haven't taken a position on
22 the new proposal by the Mayor as yet?

23 MS. SCHAFER: No, we have not; however, we've made
24 our staff available to work with them.

25 SENATOR AYALA: It's interesting that you mentioned
26 Riverside and San Bernardino Counties to add more controls
27 there, and listed the ones in urban Los Angeles, it's
28 interesting because those two counties, Riverside and San

1 Bernardino, 75 percent of the pollution's intrusion from Orange
2 and L.A. Counties.

3 Now, that's a fine solution for the Mayor to say:
4 Hey, with less regulation, but let's stick it to the other
5 counties.

6 I'm sure we're not going to hold still for that, I
7 can tell you that.

8 MS. SCHAFER: I believe in order to achieve some of
9 the Mayor's objectives, the kind of controls that are being
10 suggested have alternatives and may not be necessary.

11 As I said, we don't want to adopt impractical
12 solutions, and the ones that you're referring to, such as
13 controls over dairy farm operations, do not sound practical to
14 us or necessary.

15 SENATOR AYALA: Has a study been made yet on the
16 proposal to see what the economic interests in those areas, with
17 more regulations, would pose, and what would be economic impact
18 on those two counties that the Mayor would like to throw his
19 pollution to?

20 MS. SCHAFER: I believe that the first meeting of the
21 groups that's taking a look at the Mayor's proposal was last
22 Friday. They have a lot of tasks that need to be accomplished
23 this week before they meet again. I'm sure that they're looking
24 at whether or not the specifics in the proposal are cost
25 effective, and that will be part of our consideration.

26 SENATOR AYALA: Thank you very much.

27 MS. SCHAFER: Thank you, Senator.

28 CHAIRMAN LOCKYER: We had some considerable grief

1 last year with respect to diesel fuel requirements and
2 implementation and enforcement.

3 Is something similar brewing with respect to
4 reformulated gasoline?

5 MS. SCHAFER: As the Committee knows, the Board
6 adopted its reformulated gasoline regulation, which is the
7 strictest set of rules for controlling emissions from gasoline
8 in the world. It is a very major commitment by the refining
9 industry in this state. About \$5 billion worth of capitol
10 construction is required in order to make this fuel by our
11 deadline of March 1, 1996.

12 In order to ensure that the regulation which was
13 adopted will be implemented smoothly, the Air Resources Board
14 created an advisory committee on reformulated gasoline, and this
15 committee has a number of subcommittees, the principle efforts
16 of which are going to be to be certain that we have the
17 quantities of the reformulated gasoline available to us so that
18 there are no supply shortages that would have an artificial
19 impact on price when this fuel is introduced in 1996.

20 The second is, and this is a lesson learned from our
21 diesel experience which we don't want to repeat, the second
22 committee is looking at a testing program to make sure that the
23 reformulated gasolines are -- when they're put into the vehicles
24 in California, not just the new vehicles but the myriad
25 different engines that are in the existing vehicles throughout
26 the state, perform properly. We don't want to have any
27 performance problems as a result of using the reformulated
28 gasoline.

1 And finally, we need to have an outreach program to
2 explain to the public why we have this new fuel, what its
3 benefits are, and just as an instrument for making sure that the
4 program is implemented well.

5 One of the things that I've discovered since I've
6 come to the Board is that if there ever was a time when merely
7 voting on a rule was the end of a day for us, that day is over.
8 We have got to continue to work with the regulated community on
9 implementing each and every one of these regulations, and that
10 is a major part of the Air Resources Board's workload, and I
11 think it will be in the future for every one of these
12 regulations. It's the successful introduction of the fuel, or
13 the new technology into our economy that we need to be just as
14 much a part of as we were a part of establishing the rule
15 itself.

16 CHAIRMAN LOCKYER: I think I heard you say we're not
17 going to re-experience the same difficulties?

18 MS. SCHAFER: We certainly are taking every
19 precaution to avoid the supply disruption and the performance
20 problems and the misunderstandings that were part of the
21 introduction of the diesel fuel.

22 The diesel rule is a very effective rule in reducing
23 emissions, and we're happy that we can depend on that in terms
24 of meeting our standards in California and being able to comply
25 Federal Implementation Plan.

26 We also have high hopes for the reformulated gasoline
27 rule, and we think that in the early years, most of our emission
28 reductions will come from the implementation of that regulation.

1 CHAIRMAN LOCKYER: Do you have any sense of how much
2 extra it's going to cost consumers?

3 MS. SCHAFER: The estimate at the time the Air Board
4 adopted that rule was 12-17 cents a gallon to make. Now, the
5 market, of course, is run by supply and demand, and the world
6 price of oil may make it difficult to pass on those costs.

7 There are some refiners who have testified, for
8 example, before Mr. Katz's committee in the Assembly, that they
9 believe they could make this fuel for about 8 cents a gallon.
10 That really depends on the make-up of the refinery itself, how
11 old it is, what equipment they already have there.

12 As I said, they are putting into the ground currently
13 about \$5 billion in capitol costs, which will have to be
14 recovered, and also the cost of making this gasoline is going to
15 be much more complicated and therefore more costly.

16 One of the things that we did earlier this year was
17 to adopt a model which the refiners could use, a predictive
18 model it's called, to allow them to use more than one
19 formulation to meet the properties that we established for this
20 fuel. We hope that by using that model, they will be able to
21 begin to work to reduce the cost of producing this gasoline when
22 it is introduced.

23 CHAIRMAN LOCKYER: Finally on this topic, do you
24 contemplate any additional actions to either reward or penalize
25 refiners that comply in a timely way with your requirements?

26 MS. SCHAFER: The rule that we have, I recall,
27 includes opportunities for waivers which would have an economic
28 penalty associated with them if they were required, but those

1 are generally implemented at the staff level.

2 We expect that -- and certainly what the refiners are
3 telling us is that although it may be a tough deadline to meet,
4 that many of them are well on their way to meeting that
5 deadline, and that most of them expect to be making this kind of
6 gasoline in California in 1996.

7 CHAIRMAN LOCKYER: Ms. Schafer, I'd like to
8 interrupt, come back at about 1:30, if that's convenient for
9 you, to take additional testimony.

10 MS. SCHAFER: Certainly, Mr. Chairman. I'll be happy
11 to.

12 CHAIRMAN LOCKYER: Thank you.

13 We'll recess until 1:30 p.m.

14 [Thereupon the luncheon recess was taken.]

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AFTERNOON PROCEEDINGS

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CHAIRMAN LOCKYER: I guess we're ready to resume.

I apologize for the fact that we keep sandwiching our meetings in between other things that are happening simultaneously. It's that time of year when we all feel a little like the Ring Master with nine rings all going simultaneously. Hopefully, the elephants aren't loose.

I don't mean the partisan elephants, or the donkeys; neither one.

We left off essentially focused on the FIP and the SIP, and what we might anticipate in that department.

I guess the concern I was trying to express is that there seems to be a pattern in a variety of policy and administrative areas, but a pattern of the administration not wanting to collaborate with the federal policy makers and administrators, but rather to kind of point fingers and blame others for whatever is going on.

This seems to be one of those circumstances, that there's been several months that we've had an opportunity to respond and comment; it hasn't occurred. There were workshops that the feds sponsored; we, I guess, haven't participated. The Clean Air Coalition and L.A. Chamber and others that had negotiations ongoing with the federal EPA invited the ARB to participate; they declined.

The comments by Mr. Strock, at least, calling the Vice President names and so on, seem to suggest an attitude of confrontation rather than collaboration.

1 So, I guess those are the concerns that I was trying
2 to get at, and maybe I was too subtle or indirect in the way I
3 approached the matter.

4 I assume I could probably write your, "Oh, no, we're
5 working hard and together," response, but what do you think
6 about all of that?

7 MS. SCHAFER: Mr. Chairman, when the Congress wrote
8 the Clean Air Act of 1970, and in all the amendments since then,
9 one of the overriding principles behind that statute was that
10 the federal government would set the standards and leave it to
11 the states to carry out the laws as they saw fit.

12 Because of the nature of the air quality problem in
13 California, a very, very difficult problem, probably ten times
14 worse than the next worse case, which happens to be New York,
15 where I came from previously, we have established in this state
16 a record that is the envy of the country and of the world in
17 advancing technology to clean up the air. And we're very proud
18 of that record that we have developed. We think that we are
19 showing the way.

20 And if you look at the Federal Implementation Plan
21 that was proposed, you'll find that much of it is based on the
22 California strategy.

23 What is unfortunate, through a court reading of a
24 pre-1990 Clean Air Act version, the 1977 version, EPA has been
25 asked to come in and try to substitute its judgment for that of
26 Californians. When they do so, if you look at the actual
27 specific additional measures that they proposed, they are
28 damaging to California in many ways, and they will not address

1 the air quality problem that we have. It's clear that the FIP
2 has got some problems that are going to cost us a lot from an
3 economic point of view, and because they are unattainable as a
4 technical matter, will not result in air quality improvement.

5 As a consequence, our strategy has been to take EPA
6 at its word, which is, if we develop a good State Implementation
7 Plan, they will in fact defer to California as -- in the final
8 analysis. And rather than to try to figure out whether we can
9 make a plan that is based on fees and punitive measures work, we
10 decided to work from a bottom-up perspective with the regulated
11 community and with the air quality districts in the state to
12 produce a State Implementation Plan which we believe will be
13 fully substitutable for the federal plan.

14 I don't know whether you want to characterize that as
15 confrontational or not. I think it's constructive. It allows
16 us to focus on what I believe the Congress intended, which was
17 for the states to take the lead in carrying out the statute.

18 It's a formula that's worked very well for us in the
19 past. This is the first time that such a Federal Implementation
20 Plan has been written that just didn't work out very well for
21 us. So, we'd like to see them set that aside, allow us to use
22 the State Plan as the basis for demonstrating attainment, and
23 move forward on that basis.

24 And I believe that comments that have been made by
25 federal officials are that they will certainly bow to the state
26 when our plan is due and it meets their expectations.

27 CHAIRMAN LOCKYER: I've heard the same thing, and I
28 fully agree that there are major defects in the federal plan.

1 So, it makes sense to try to promulgate a state-sensitive
2 alternative.

3 What I don't understand is refusing to participate in
4 the EPA workshops, not responding to the problems, the perceived
5 problems, with their plan for six months, not participating in
6 negotiations with the L.A. Chamber and others, and a lot of
7 name-calling.

8 Those are the acts that suggest to me that the theme
9 this year is the Governor runs against Bill Clinton, which I
10 guess is fine, but as one of his administrators responsible for
11 policy setting and administration of a very important program,
12 I'm disappointed that it gets to your level.

13 MS. SCHAFER: Mr. Chairman, I have met with the L.A.
14 Chamber, and in fact, our staff has talked to EPA and to the
15 local air districts, and have worked with them. We provide most
16 of the modeling, and inventory analysis on which all of these
17 plans are based.

18 In the end, though, what we will be held accountable
19 for, and what EPA has told us we would be held accountable for,
20 is putting together a good State Implementation Plan. And
21 that's where I've focused my effort consistently since my
22 appointment.

23 CHAIRMAN LOCKYER: Let's ask if there are people who
24 would wish to comment, either in support of or in opposition or
25 raise concerns, whichever you might characterize your views.

26 Let me start with supporters, maybe, if there are any
27 of those.

28 MR. PERRY: Good afternoon, sir. My name is Carl

1 Perry. I'm the President and Chief Executive Officer of U.S.
2 Electricar International, which is based in Santa Rosa,
3 California.

4 Mr. Chairman, Members of the Committee, thank you for
5 the opportunity to testify today in support of several
6 outstanding individuals, unquestionably qualified for
7 confirmation to serve as members of the California Air Resources
8 Board.

9 Under the capable leadership of Chairman Jacqueline
10 Schafer and her colleague, Lynne Edgerton, the Air Resources
11 Board is leading the effort to bring California the tremendous
12 health, environmental and economic benefits of cleaner air.

13 As President of the California-based U.S. Electricar,
14 and I believe, sir, that we are the largest full line
15 manufacturer of electric vehicles in the United States and
16 possibly the world, I'm here today as proof that the vision,
17 leadership and demonstration shown by Chairman Schafer and
18 members of the Board are beginning to pay tangible dividends to
19 our state.

20 The Air Resources Board's support of clean fuel
21 vehicles has created a positive business climate and allowed
22 advanced transportation companies, like U.S. Electricar, to
23 raise millions of dollars of private capital, form strategic
24 partnerships with companies worldwide, and most importantly,
25 employ hundreds of Californians. Many of those people on our
26 payroll are displaced defense and aerospace workers and
27 economically disadvantaged residents of the riot-torn part of
28 downtown Los Angeles.

1 If I might say, sir, that we have capacity -- the
2 question has been asked: well, with these mandates and where
3 we're going with CARB, is the technology there? Are the
4 vehicles there? Is the market there?

5 My company's a small company, but we have facilities
6 in Los Angeles, Redlands, California. We are, in a sense, in
7 partnership with General Motors; we buy our drive systems from
8 General Motors-Hughes. We buy our cars from -- really they're
9 Geo Prisms and the Chevrolet X10s that we convert.

10 CHAIRMAN LOCKYER: Keep buying those Geo Prisms.
11 They're from Fremont.

12 MR. PERRY: Yes. We're going to buy 2,000 of them
13 this year, sir.

14 We have the capacity to build over 4,000 vehicles
15 this year. This is at the time some parts of the automotive
16 industry say the market isn't there. We've raised a tremendous
17 amount of money ourselves; it's private capitol. We have no
18 real federal money or any other money like that. It's our own
19 capitol. So, I'm saying that the market is here. We're
20 building.

21 CARB has created this atmosphere. They have stood
22 firm. They have stayed the course. They have fought against
23 people who said, "Well, the time is not now, the technology is
24 not now. The technology and the vehicles cannot be made and the
25 market is not now."

26 And I would just like to say as a California company
27 who started with 20 employees last August, who has 300 employees
28 as we speak, will have close to 900 by the end of our fiscal

1 year which will be next July, we'd like to refute those
2 statements because we think we're a living, breathing proof that
3 it can be done in California, and it does work, and the
4 technology is here.

5 We're also putting a facility in New York State,
6 along with Governor Cuomo. We are part of NAFTA in building
7 vehicles to help Mexico City. We're also working in Canada.
8 We're exporting our technology, and we are building our vehicles
9 from California to export to Japan.

10 So, in summary, I would say, sir, that it's critical
11 that the members before you, both Jacqueline Schafer and Lynne
12 Edgerton, before you today are confirmed so that our Resources
13 Board can continue to promote the policies and programs to
14 protect public health and stimulate the development of
15 environmental technologies and advanced transportation in our
16 state, and in the industries concomitant with that.

17 The continued leadership of the Air Resources Board
18 will allow California to maintain the lead in the global race to
19 develop new environmental and transportation industries. We're
20 proud to be a part of it.

21 Thank you very much.

22 CHAIRMAN LOCKYER: Thank you, Mr. Perry.

23 MR. TORRENS: Mr. Chairman, Members, I'm John
24 Torrens, represent PG&E.

25 When Chairwoman Sharpless left the ARB, we had three
26 major initiatives going with the Air Resources Board, and we
27 were somewhat concerned that the impetus, the money, and the
28 staff leadership that had been experienced to date would somehow

1 be lost when Chairwoman Schafer came. So, we met with her, and
2 we expressed our concerns over the San Joaquin Valley air study,
3 which is a \$17 million modeling study that will be the state of
4 the art air quality modeling study ever done in the world; the
5 NO^x retrofit program, a \$250 million program where all of our
6 existing fossil-fired power plants are being equipped with state
7 of the art NO^x control devices; and finally, our clean air
8 vehicle program which emphasized the use of natural gas and
9 electric powered vehicles.

10 The San Joaquin Valley air study is now producing
11 results the likes of which have never been seen by science
12 before. We know where the pollution is coming from, where it's
13 going, and how it's interacting with the weather and the air in
14 California.

15 The NO^x retrofit program is out to bid. Construction
16 in some of our power plants is underway, and soon our NO^x
17 emissions from our major fossil units will be reduced by 90
18 percent, and on a schedule that is fair to our shareholders and
19 ratepayers.

20 And you cannot go out and cross L Street today, right
21 now, without seeing a natural gas bus drive by. And you'll see
22 natural gas cars and buses just about everywhere you go in
23 California, followed soon, we believe, by electric.

24 So what I'm trying to point out to you in support of
25 Chairwoman Schafer is that the initiatives that were started as
26 far as our company is concerned have been not only carried out,
27 some cases finished up, and in a timely way, and in a way that
28 has been economic for us and our ratepayers.

1 We would encourage you to recommend confirmation of
2 Chairwoman Schafer. Thank you.

3 CHAIRMAN LOCKYER: Thank you.

4 MR. GREENE: Mr. Chairman, Members, I'm Jim Greene,
5 representing Southern California Gas Company.

6 Since the Chairwoman's appointment, we've had a
7 chance to work with her and observe her work. We have been very
8 impressed with both her technical skills and her leadership
9 abilities, particularly in the low emission vehicle area, which
10 is of concern to us, and we would urge her confirmation.

11 Thank you.

12 CHAIRMAN LOCKYER: Thank you.

13 MS. MARTIN: Mr. Chairman and Members, I'm Cecile
14 Martin. I'm the Deputy Director of the California Electric
15 Transportation Coalition, and I'm speaking today on behalf of
16 our founding members' and state's major electric, and electric
17 and gas utilities, both investor owned and municipal.

18 We're here to support Ms. Schafer's confirmation as
19 Chairwoman of the California Air Resources Board. We and our
20 members have found Ms. Schafer to be informed and attentive to
21 California's air quality challenges. She's been a strong
22 supporter of California's low emission vehicle program, and we
23 have applauded Ms. Schafer's particular interest and sensitivity
24 to the economic development and export potential of California's
25 nascent advanced transportation technology industry.

26 We urge you an aye vote on her confirmation. Thank
27 you.

28 CHAIRMAN LOCKYER: Thank you.

1 MR. THOMAS: Mr. Chairman, Members of this Committee,
2 my name is Michael Thomas. I am from the California Trucking
3 Association.

4 I am here today to cast an aye vote and ask for your
5 confirmation for Ms. Schafer to the Air Resources Board. CTA
6 has spent thousands of man hours investigating the FIP. We have
7 attended virtually all hearings.

8 I am here to tell you today that I was present at the
9 South Coast AQMD hearings two weeks ago. ARB was there, and ARB
10 was named to the special committee appointed by the chairman
11 down there to investigate their plan. So, ARB is participating.

12 I am also here to tell you that the CTA and ARB were
13 together at a symposium in Huntington Beach two weeks ago where
14 we introduced numerous alternative plans that could be
15 instituted in a state SIP.

16 I am also here to answer any question that you may
17 have concerning the Federal Implementation Plan and its results
18 with California.

19 Thank you.

20 CHAIRMAN LOCKYER: Thank you, sir.

21 MR. ROSS: Mr. Chairman and Members, my name is Tommy
22 Ross on behalf of Southern California Edison.

23 We agree with the statements by the previous
24 witnesses. We also strongly support Ms. Schafer's appointment
25 as Chair of the Air Resources Board and encourage you to vote
26 for that nomination.

27 One brief statement that I'd like to make is that
28 contrary to characterizing her tenure as being confrontational,

1 from our perspective we've found her to exercise very
2 substantial leadership skills. We've found her approach to be
3 balanced, fair, and we found her to be very approachable.

4 We again encourage you to vote in favor of her
5 appointment.

6 CHAIRMAN LOCKYER: Thank you.

7 MS. TUCK: Thank you, Chairman Lockyer and Members.
8 Cindy Tuck today on behalf of two organizations. First is
9 CCEEB, the California Council for Environmental and Economic
10 Balance, and also the California Grape and Tree Fruit League.

11 Both of these organizations support the confirmation
12 of Ms. Schafer. We urge your aye vote.

13 Thank you.

14 CHAIRMAN LOCKYER: Thank you.

15 MR. KENNEDY: Good afternoon, Chairman and Members of
16 the Committee.

17 My name is John Kennedy. I'm the Director of
18 Advanced Applications for Allied Signal Aerospace, a large
19 California aerospace company. We are currently involved with
20 several programs on fuel cell development and hybrid vehicle
21 development.

22 I've submitted a letter for the record in support of
23 this nomination, but I'd like to make some comments. And I
24 think several things come out to me.

25 One is, Jacqueline has a superb record of achievement
26 in environmental matters over her career. I think everybody
27 should keep that in mind, that she has been an achiever in that
28 field.

1 I think several of the other speakers have already
2 pointed out the most important thing to us, and that is the
3 leadership issue here, because I really think that what we need
4 as we go forward is leadership, even more than in the past. I
5 also think it's been noted by several people that she has a very
6 clear view of the interaction of economic and environmental
7 concerns, and recognizes that they do not have to be
8 confrontation, that there are solutions that consider both and
9 are constructive on both fronts.

10 And I'd like to emphasize especially the impact of
11 far-sighted leadership at CARB in the future, because as we go
12 into the 21st Century, with environmentally friendly and energy
13 efficient technologies, California needs to retool its great
14 economic base in high tech to generate those technologies, and
15 generate the jobs, and generate sustainable growth with a better
16 environment.

17 We urge confirmation. Thank you.

18 MR. NORTHROP: Mr. Chairman and Members, my name is
19 Bill Northrup. I'm Executive Vice President of the Independent
20 Oil Producers Agency.

21 We submitted a letter for the record. I shan't
22 repeat all the laudatory things that have been said about
23 Ms. Schafer.

24 We urge your approval.

25 CHAIRMAN LOCKYER: Thank you.

26 Is there other support present?

27 Perhaps I could interrupt any opposition comment
28 simply to ask a couple of additional questions, partly because

1 I'm anticipating there'll be some issues raised during other
2 comment.

3 I guess the Air Resources Board has indicated that
4 you are fuel neutral as to clean air issues. It is at least
5 claimed that representations have been made that whatever the
6 federal policy is, we would work to implement that federal
7 mandate or direction.

8 That seems to be contradicted by Cal-EPA using your
9 studies and data in joining the lawsuit challenging the federal
10 reg. on fuel additives.

11 I guess I'd like to draw you out on the issue of
12 ARB's involvement in that issue, or your own thoughts about
13 whether that was a wise or unwise decision for Cal-EPA to make?

14 MS. SCHAFFER: The California Air Resources Board did
15 submit an affidavit in a lawsuit, objecting to the
16 implementation of EPA's renewable oxygenate rule. EPA's rule
17 was finalized at the end of June. However, in February of this
18 year, and this position that we have taken at ARB is a position
19 that we have been consistent in for the last 20 years or so,
20 we've commented on the rule when it was still a proposal.

21 The problem that we have with EPA's rule is that it
22 specifies a fixed percent of ethanol or its derivatives,
23 renewable oxygenates, as an additive to gasoline. And what we
24 discovered in that rule extensively as a result of the oil
25 embargo of the mid-70's, that adding these alcohol fuels
26 actually increased their volatility and created a problem in
27 terms of air quality.

28 So, our concern has been, as we've developed our

1 regulations over the years and improved on those to the point to
2 where we're adopting a reformulated gasoline standard effective
3 on March of 1996, that we have the best fuel possible, and the
4 most flexible operating characteristics possible, so that our
5 refiners can meet the standards, get the maximum benefit from
6 this, as I mentioned earlier, \$5 billion worth of capitol
7 investment that we are putting in in California.

8 The EPA regulation makes it more difficult to do
9 that, because it requires a particular fixed percentage of
10 ethanol or ethanol derivative. In one extreme in Southern
11 California -- and this rule, the EPA rules only apply in Los
12 Angles and San Diego -- that we could be penalized as much as 20
13 tons a day for using ethanol.

14 The alternative derivative would, in fact, increase
15 our cost significantly, and we discussed that earlier. We'd
16 already estimated increasing the cost of gasoline as the result
17 of our reformulation, and we'd like to be able to have
18 incentives that would allow the industry to drive the cost of
19 production down and not up. One of the problems is that EPA's
20 rule will increase the costs in California.

21 So, what we'd like to do is to keep fuel neutral.
22 Any fuel that can meet the specifications that we've identified
23 in our regulation is one that's acceptable to us. EPA did not
24 allow us that flexibility, so we objected to it and also made
25 our views known to the court, which is considering a motion to
26 stay the implementation of those regulations.

27 CHAIRMAN LOCKYER: So that anxiety about the science
28 and the volatility standards was, in your view, what prompted

1 the lawsuit?

2 MS. SCHAFER: Well, for California's participation,
3 our objection to EPA's renewable oxygenate rule is based on a
4 history that we have had since 1971, when we adopted regulations
5 limiting the RVP measure of volatility. We have a very strict
6 set of parameters with our new reformulated gasoline, including
7 a very low RVP number for controlling the characteristics of
8 these fuels.

9 We believe that EPA's rule interferes with our
10 ability to achieve those goals in terms of emission reductions,
11 and we feel that we should have objected to that, and we did
12 that.

13 We have -- the Legislature has considered waivers
14 from our RVP rule over the years, but most recently they added a
15 condition specifying -- I think this was last year -- that
16 ethanol blends must comply with the comprehensive standard that
17 ARB establishes for reformulated rules.

18 Again, we believe that our way is the best way for us
19 in California to proceed, and that EPA introduced an artificial
20 requirement that would make it more difficult for us to achieve
21 the air quality standards and would make it more expensive.

22 CHAIRMAN LOCKYER: Let me move on to ask about Mayor
23 Riordan's proposals that regulatory activity in the Los Angeles
24 area ought to be reduced or suspended because of job impacts,
25 and he's recommended that San Bernardino and Riverside Counties
26 be involved to a greater extent in ammonia reduction at dairies,
27 or other efforts, that would help meet the goals.

28 Do you have a view about those recommendations? Have

1 you spent time analyzing them?

2 MS. SCHAFER: No. As I explained to Senator Ayala,
3 his plan has surfaced only recently at the South Coast Air
4 Management hearing on August the 12th. As a result of his
5 introducing alternatives, the South Coast, which is developing
6 their portion of the plan that becomes part of the State
7 Implementation Plan, decided to take a good look at the plan
8 that the Mayor proposed.

9 Our concern is to make sure that the modeling that's
10 done in the South Coast plan is correctly applied, and we think
11 that they're both using good models, which really depends on who
12 you -- what kind of assumptions you put in.

13 The issue here is that you can achieve the air
14 quality that we require in Southern California to demonstrate
15 attainment by having various levels of control over volatile
16 organic compounds and oxides of nitrogen. These can be -- there
17 are tradeoffs among them. And so, if you plot these on a curve,
18 you can pick any place on the curve to get those kinds of
19 emission reductions, so you have to make a decision, a policy
20 decision, which the South Coast is involved in making, of what's
21 the optimal trade-off of those control strategies to get to the
22 attainment demonstration. That's the kind of technical
23 discussion that's going on right now and will proceed for the
24 next month.

25 The specific proposals that are in the Los Angeles
26 plan I have not personally reviewed, but if Southern
27 California's South Coast Air Quality Management District
28 includes some of those in their plan to us, we will review it at

1 the state level when it comes to us.

2 Our role now is to have staff participation to make
3 sure that they have the best science, the best modeling, and the
4 most practical set of assumptions going in, but as I indicated
5 to Senator Ayala, we certainly have no intention of passing
6 along as part of the state plan something that is impractical
7 and suboptimal in terms of the control strategy.

8 CHAIRMAN LOCKYER: Senator Ayala.

9 SENATOR AYALA: I have a couple other questions I'd
10 like to put before you.

11 It's been brought to my attention that it appears as
12 if the ARB is no longer enforcing the heavy vehicle smog
13 inspection program, that no citations have been issued to
14 violators of the smoke emission truck standards.

15 Do you know if that's correct or not?

16 MS. SCHAFER: Prior to my joining the Board, prior to
17 my appointment, the Air Resources Board did shift resources,
18 staff resources, from enforcement of the heavy duty standards --
19 heavy duty truck smoke regulation, over to working on other
20 aspects of our diesel fuel regulations. And in the interim,
21 it's our understanding, and I believe the Legislature has
22 supported this, that we need to take another look at how we're
23 going about actually taking that test.

24 We are working with the institutions, professional
25 institutions, that actually developed good test procedures to
26 use, and until our confidence is increased that the test that we
27 are running is the best test for doing that, we probably will
28 not be doing any additional checks against the old standard.

1 The old standard was the best available at the time,
2 but the suggestion that we've had from all concerned is that
3 there is a better standard that we should be aiming towards, and
4 we expect to have that better standard available to us later
5 this year, in which case we will again address the enforcement
6 of heavy duty smoke.

7 But it was resource issue, the decision that was made
8 prior to my taking office. In the meantime, technical questions
9 have been raised, and we're working towards coming up with the
10 best test that will be the most consistent in fairness in terms
11 of stopping these trucks on the roadside and --

12 SENATOR AYALA: Currently, the truck smoke emissions
13 inspection program is no longer in operation; is that what
14 you're saying?

15 MS. SCHAFER: It's been suspended pending the
16 identification of a better test and a more consistent and
17 dependable test to do that.

18 SENATOR AYALA: It's kind of unfair for the regular
19 passengers that have to stand inspections, smog inspections, of
20 their cars before they're issued a new license and so forth, and
21 let the trucks, who are emitting heavy-duty smoke, just get away
22 with it.

23 MS. SCHAFER: The snap idle test, as this is called,
24 is not the only enforcement tool that we have available to us.
25 Fleets that operate trucks in California are expected to have a
26 program in place to do self-inspections and to make sure that
27 their -- the engines in their vehicles are performing properly.

28 It is not exactly like the test that we have for

1 passenger cars, but it's one that we think is effective.

2 This additional so-called snap idle test is one that
3 we have depended on, but some technical problems have arisen,
4 and until we resolve those, we would prefer not to put a
5 procedure in place that is not one that we have a lot of
6 confidence in.

7 SENATOR AYALA: You and I discussed the health risk
8 at great length the other day.

9 What risk does allowing loading trucks to operate on
10 California highways pose to public health?

11 MS. SCHAFER: One of the issues that was raised with
12 our reformulated diesel fuel was to try to reduce the health
13 consequences of those emissions, the exhaust emissions. As a
14 consequence, just with the reformulated diesel fuel, we will
15 reduce emissions about -- that are of concern from a toxic point
16 of view, about 25 percent. So, we're going a long way towards
17 reducing any health exposure from these trucks just by that rule
18 alone, because you put that reformulated diesel fuel into all
19 the trucks that are buying gas in California.

20 As I mentioned earlier in testimony, we expect that a
21 major part of our future program for demonstration of attainment
22 that we have to make later this year will be to establish new
23 standards to make sure that as trucks are introduced into the
24 fleet, that they are the cleanest trucks possible.

25 SENATOR AYALA: Doesn't a flagrant violation of the
26 truck emission standards erode public support for efforts to
27 clean the air that may inconvenience the regular motorists, such
28 as the smog check program? Why should we be lenient on trucks,

1 who are really polluting heavily, and be very strict with
2 everyone that drives a car? It doesn't make sense to me, why
3 you're doing that.

4 MS. SCHAFFER: We want fairness not only between the
5 operators of trucks and operators of passenger vehicles, that is
6 part of our program. We also want fairness among operators of
7 truck fleets, and there are some outstanding truck fleet
8 operators who are trying to do the right thing. It doesn't do
9 them any favors, and it doesn't increase their confidence, if
10 there are other members of the trucking organizations that don't
11 meet those standards.

12 So, even-handed enforcement policy is, in fact,
13 underlying our approach to this throughout.

14 SENATOR AYALA: Until they start realizing that they
15 are going to be citing some of these polluting trucks, I can
16 understand why the trucking association supports you, because
17 they're getting away right now with something they shouldn't.

18 MS. SCHAFFER: I don't think that's true. As I said
19 before, we have standards. They are in place, and the fleets
20 must observe them. And we have ways of reviewing, from an
21 enforcement point of view, whether or not they're doing a good
22 job.

23 This one tool is a tool that we would like to be able
24 to use, but we want to use with with greater confidence than we
25 have now, and we need to have the new standard, the SI standard,
26 finalized before we reinstitute it.

27 But we do have an enforcement program. It is
28 designed to keep an even-handed enforcement policy with respect

1 to cars and trucks, and among the truck fleets themselves.

2 SENATOR AYALA: Thank you.

3 MS. SCHAFER: Thank you, Senator.

4 CHAIRMAN LOCKYER: Well, I think Senator Ayala,
5 perhaps, has highlighted one area. Senator Petris's staff shows
6 me others; perhaps he'll want to comment on the others.

7 It appears that economic analysis rather than health
8 and safety focus dominates in CARB. I guess that's somewhat a
9 subjective evaluation, but as I read the correspondence, it's
10 always an economic emphasis on the letters that are written and
11 testimony provided, and so on.

12 That's not to say that we shouldn't be sensitive to
13 our state's economy because, obviously, we have to be. But
14 there's a certain tone about it. Maybe it is reflected in your
15 own training as an economist, but I just note that the areas of
16 diesel emissions, the ethanol issue, and others, seem to reflect
17 that administration's concern about economic matters rather than
18 clean air.

19 In my mind, that is violative of your fundamental
20 mission statement, and you don't have to respond.

21 MS. SCHAFER: Mr. Chairman, if I may, I would like
22 to, however.

23 CHAIRMAN LOCKYER: Yes.

24 MS. SCHAFER: It's been my experience, after working
25 in this field for over 25 years, that the only way that we can
26 reach our environmental goals, and I subscribe fully to the
27 environmental goals that we have established here in California
28 and under the federal statutes that we also must operate, the

1 way we can do that is to make sure that we have a strong,
2 healthy and growing economy. That is the way we can afford to
3 put into place the new technologies that we need to achieve the
4 emission reductions that we all need.

5 As I said in my opening statement, I believe that
6 these can work in tandem. I think we've heard from Mr. Perry
7 that in fact they have worked to help to stimulate new economic
8 activity in the environmental technology field, and I think that
9 is something that we can look forward to. That will help all
10 Californians clean up the air as well as enjoy the benefits of a
11 prosperous, free society.

12 CHAIRMAN LOCKYER: Well, okay. I guess by way of
13 response, I'd point out, first of all, that the initiatives
14 referred to are ones begun in the previous administration.
15 Mostly what I have seen during the current administration is an
16 emphasis on accumulating power, and centralizing, and bringing
17 more and more power into the hands of upper level bureaucrats.

18 And when you ask about substantive results, it's all
19 a work in progress: well, we're working on a new regulation;
20 we're working on a new system; we're working on a new model;
21 we're thinking about responding or complying. It's all a work
22 in progress.

23 It's very hard to evaluate the work product of this
24 administration, other than to say that there seems to be a
25 preoccupation with getting a grip on more and more power, and
26 that's it. There's very little sense of what they want to do
27 with the power once they get it.

28 SENATOR CRAVEN: May I, Mr. Chairman.

1 CHAIRMAN LOCKYER: Senator Craven.

2 SENATOR CRAVEN: What are you talking about? I don't
3 understand that at all.

4 CHAIRMAN LOCKYER: Well, with respect to the issues
5 before us, we hear again and again: well, yes, we've had six
6 months to respond to the federal requirement. We're still
7 thinking of doing that between August 22nd and August 31st.

8 Then, we're working with the South Coast and others
9 to propose a State Implementation Plan. I assume that there's a
10 lot of work involved in evaluating and responding to those local
11 suggestions as they trickle up, but that has to be done a couple
12 months from now, two and a half months.

13 And it's always a work in progress. I never see, you
14 know, somebody creates controversy, so she gets fired. Somebody
15 else initiates, and they get pushed aside while we think about
16 it some more.

17 So, what I've seen is an administration preoccupied,
18 and I think it is endemic to the captain of the ship. That's
19 where it starts from, that there's an administration preoccupied
20 by getting more and more power clutched into its bosom.

21 SENATOR CRAVEN: I have to disagree with you on that.

22 CHAIRMAN LOCKYER: I respect the disagreement. I'm
23 telling you what my observations are. Nothing comes out of it.
24 It's just a lot of get power, and think about things, and then
25 nothing ever happens. It's frustrating.

26 SENATOR CRAVEN: May I respond, Mr. Chairman?

27 CHAIRMAN LOCKYER: Certainly.

28 SENATOR CRAVEN: I think there is a preoccupation,

1 but I think that preoccupation is channeled definitely toward a
2 technological improvement on what we have done heretofore. And
3 when they take time -- you've mentioned that, and I would agree,
4 it takes time, obviously, and I'm sure that you agree with that.

5 You deal with Los Angeles, one of the great cities in
6 the world, to try to take care of their problem; San Diego, one
7 of the other larger cities, that has to be worked on as it
8 applies to both of those areas, and that must be implemented
9 into the plan of the entire state.

10 Now, I've heard a lot of people come in here and
11 testify in many, many years. I've never heard anyone who I
12 think in any way could show more expertise than this lady has
13 shown. And I think you would have to be almost deaf not to feel
14 that she knows exactly what she's doing. She can refer to what
15 they have done, and I'm sure that she is big enough to say if
16 they have not succeeded. I don't recall that she really has
17 said that, but that was something that happened before her.

18 But to me, she has shown, I think the get-up and go
19 that we need. But, Mr. Chairman, I don't feel that anything
20 that she does, she assumes because of might that she or her
21 organization was just to be powerful.

22 She must serve someone well, because in the blue
23 sheets here are the people who have chosen to comment, 17 of
24 them endorsed her completely, and one did not.

25 Now, I'm not say that that necessarily makes them
26 right, but ordinarily when you have that kind of a relationship
27 with the public, and they seem to return a feeling or an
28 opinion, I have to be impressed with that.

1 CHAIRMAN LOCKYER: Well, I respect your analysis.

2 SENATOR CRAVEN: Thank you, Mr. Chairman.

3 CHAIRMAN LOCKYER: Maybe we could ask if there are
4 any opposition. There might be a couple of them. they might
5 come forward, who ever wishes to comment.

6 MR. VIND: Mr. Chairman, my name is Richard Vind.
7 I'm Chair and Chief Executive Officer of Regent International.
8 We are in the ethanol business in California, and have been
9 since 1979.

10 I am disappointed to have to appear here today
11 before you on behalf of the ethanol producers to raise serious
12 concerns about the leadership of Ms. Schafer at the Air
13 Resources Board.

14 When she was first appointed, our industry was asked
15 by our Governor to meet with her in order to confirm her fuel
16 neutrality. And he asked us to enlist our support in order to
17 confirm her in the Senate here.

18 During that meeting, we asked Ms. Schafer what her
19 agency would do if the federal EPA passed an ethanol mandate as
20 part of its renewable oxygenate requirement. She responded that
21 if California was not exempted, as she expected, she would work
22 closely with our industry in its implementation.

23 You could imagine my concern, therefore, when after
24 the EPA's ethanol mandate was adopted, that California EPA
25 Secretary, James Strock, cited CARB data in an affidavit to the
26 U.S. Court of Appeals attacking the renewable oxygenate
27 requirement by declaring ethanol to be a dirty fuel.

28 It occurred to me that the reason for this action

1 might lie in the fact the only other party in the lawsuit is the
2 major oil companies who are adamantly opposed to expanding the
3 use of ethanol. The unholy alliance between big oil and the
4 agency expected to protect California's environment was
5 partially confirmed by Secretary Strock's outrageous attack on
6 the Vice President of the United States for his key vote in the
7 Senate, ratifying the renewable oxygenate program. In a
8 blatantly politically motivated attack, Secretary Strock called
9 Vice President Gore "a pathetic spectacle" for his action on the
10 EPA initiative, the same agency which Ms. Schafer used to work
11 for.

12 Not until last Friday, though, did I observe
13 irrefutable proof that the attack on ethanol is political
14 pay-back for the concern the major oil companies have about the
15 reformulated gas rule, which Ms. Schafer says, repeatedly has
16 said today, will cost the major oil companies \$5 billion. I
17 don't dispute that.

18 Thanks to the California Public Records Act, which
19 this body passed some years ago, I have obtained documents that
20 clearly show that senior staff at the California Air Resources
21 Board submitted a preliminary draft of Mr. Strock's affidavit to
22 the oil industry for comments and changes three days before the
23 document was officially submitted to the Federal Court of
24 Appeals. This smoking gun memo is not listed among the
25 documents that were turned over to me, which my lawyers tell me
26 that this practice is a violation of the Bagley-Keene Open
27 Meeting Act, which prohibits private communications by state
28 agency officials regarding policy rule implementation.

1 CHAIRMAN LOCKYER: We have these documents that have
2 been supplied to us that maybe you could help us interpret.

3 MR. VIND: That's fine, Mr. Chairman. I'm almost
4 finished here.

5 I did want to point out, it should be noted that the
6 same preliminary draft that the fine folks at Texaco were
7 privileged to receive was refused to me when I requested it
8 under the California Public Records Act request of August 11.
9 In fact, it was said that this was not the public interest to
10 disclose it to me, but it was given to Texaco and Chevron one
11 day -- two days prior to Secretary Strock filing this with the
12 Federal Court.

13 My questions for Ms. Schafer: were you aware of
14 that unholy alliance between your top staff and the oil
15 industry? And if you were not, why, as chief executive of this
16 important board, were you not aware of such critical policy
17 action by your senior staff? And finally, if confirmed, would
18 it continue to be your practice or the practice of your agency
19 to allow major oil companies to write the air quality policy for
20 California?

21 Mr. Chairman, I refer you to the August 18
22 memorandum.

23 CHAIRMAN LOCKYER: Explain these documents to us, if
24 you would.

25 Have you seen these? Would you like a copy?

26 MR. VIND: I have highlighted them, which might make
27 it easier for the Members to follow.

28 CHAIRMAN LOCKYER: I don't have highlighted ones, if

1 you want to distribute those.

2 MR. VIND: If you'll notice, in the response dated
3 August 18th by the California EPA to my lawyer, Mr. Andrew
4 Bracker, this was in response to the August 11th California
5 Public Records Act request for documents pertaining to the
6 Cal-EPA's affidavit they filed in Federal Court to try to
7 overturn the EPA's renewable oxygenate requirement.

8 If you'll notice in paragraph two, it says:
9 "Attachment A hereto lists all of the documents and records ..."
10 all of the documents.

11 Paragraph three says: "... with the one exception
12 noted below ..." Paragraph four cites the reason that they
13 withheld this document. It says:

14 "We are withholding a preliminary
15 draft of the affidavit that was
16 transmitted July 26, 1994. [They are]
17 not required to be disclosed provided that
18 the public interest in withholding the
19 records clearly outweighs the public
20 interest in disclosure. There is an
21 important public interest in withholding
22 such drafts so that the deliberative
23 processes within the agency are not
24 restrained."

25 This is the same draft that was sent on July 27th to Texaco and
26 Chevron for comment.

27 CHAIRMAN LOCKYER: How do we know that?

28 MR. VIND: If you'll refer to the last two pages.

1 CHAIRMAN LOCKYER: So, you're saying two days before
2 Mr. Strock joined the lawsuit, in effect joined it with the oil
3 refiners, that the affidavit that he would submit in joining
4 into that lawsuit was circulated to the oil refiners but refused
5 circulation to your --

6 MR. VIND: It was never offered to us, yet when we
7 asked for it after the fact, for the working documents, they
8 claim privilege, that they could not give it to us because it
9 was not a public document.

10 Texaco finally did respond on July 27th, as noted, to
11 Dean Simeroth on the Air Resources Board staff, with a copy to
12 Al Jessel of Chevron Oil Company, with comments, three comments.
13 And it says:

14 "Dean:

15 "I've reviewed the draft affidavit
16 provided by Mike Kenny ..."
17 who's with your Legal Affairs Department,

18 "and I have a few comments."

19 What is curiously missing from this is Chevron's letter, which
20 we do not have, but we are filing today with the agency a demand
21 that we receive all of the other documents that have been
22 withheld from us.

23 This one, obviously, was given to us when they didn't
24 want to do it. I'm sure this is the type of thing they would
25 rather have us not see.

26 CHAIRMAN LOCKYER: What was specifically refused?

27 MR. VIND: The draft of the affidavit that James
28 Strock filed on behalf of the People of the State of California.

1 CHAIRMAN LOCKYER: That's this first document.

2 MR. VIND: That's correct, which had been submitted
3 to the oil companies, at least two, two days prior to filing
4 with the Federal Court to overturn the renewable oxygenate
5 program.

6 CHAIRMAN LOCKYER: Have you been able to tell
7 whether, when those documents were ricocheted between Cal-EPA
8 and oil companies, whether there were any changes made? Are you
9 able to tell that?

10 MR. VIND: No, sir, I could not tell at this time
11 because I do not have the Chevron response which has been
12 withheld from us.

13 CHAIRMAN LOCKYER: The Texaco comments?

14 MR. VIND: The Texaco comments in part were
15 incorporated into the Strock affidavit, but again, Mr. Chairman,
16 I do not have the draft affidavit, so I cannot compare.

17 But clearly, it's designed to try to overturn the EPA
18 ethanol requirement.

19 CHAIRMAN LOCKYER: It's a little confusing; it's a
20 little hard to follow all of the document trail.

21 As I understand your point, you think that the agency
22 collaborated with the oil refiners in a way that was adverse to
23 your industry.

24 MR. VIND: Clearly.

25 CHAIRMAN LOCKYER: And refused to comply with Public
26 Record requests which would have allowed you to learn that that
27 was going on.

28 MR. VIND: Clearly, Mr. Chairman.

1 CHAIRMAN LOCKYER: Is ARB involved in this?

2 MS. SCHAFER: The Air Resources Board staff did
3 provide scientific information which was the basis for
4 Mr. Strock's affidavit. And I was aware that a Public Records
5 Act request had been made, and my guidance to the staff was to
6 provide all documents in a timely manner. I think a seven-day
7 turnaround is pretty quick, if in fact those are the dates.

8 MR. VIND: I agree.

9 MS. SCHAFER: That were, within the law, required to
10 be turned over, and that was a determination made by our
11 counsel's office. I certainly support what they've done.

12 Personally, I have not examined the documents that
13 are all referred to here, but our intention was to comply with
14 the Public Records Act request. We have nothing to hide. Our
15 position is as I said it was. It's been a position that we've
16 taken historically here.

17 I'd like to point out one thing. We don't think
18 ethanol is a dirty fuel. Ethanol is not a dirty fuel, and pure
19 ethanol in an automobile, or pure ethanol in a stationary boiler
20 would be a very good fuel.

21 Our concern with ethanol is when it's blended with
22 gasoline. Its volatility increases, and we have fuel -- an
23 emissions penalty associated with that.

24 And I have met with Mr. Vind and representatives of
25 his association, and we and Cal-EPA will work with them to
26 create an ethanol-based industry in California for the proper
27 applications of those fuels.

28 However, as I say, the way EPA wrote the renewable

1 oxygenate rule, it penalized California from an air quality
2 point of view, and we could not support it. And that's the
3 technical information that was supplied in these documents.
4 Apparently the one that has not been supplied was a draft, and
5 I'm sure that that is quite proper, the way the staff handled
6 that.

7 CHAIRMAN LOCKYER: Mr. William Carter, I guess, is
8 the attorney that seems to be involved.

9 MS. SCHAFER: Assistant Secretary of Cal-EPA for Law
10 Enforcement and Counsel. However, our staff attorneys and our
11 technical staff reviewed Mr. Strock's -- on behalf of Cal-EPA,
12 reviewed Mr. Strock's affidavit in order to find it technically
13 correct.

14 MR. VIND: Mr. Chairman, you will note on the Cal-EPA
15 response to me, to my lawyer --

16 CHAIRMAN LOCKYER: I was noting that Cal-EPA lists 16
17 documents that they providing pursuant to the Public Records
18 Act, but apparently the documents from Texaco, which would have
19 been in the file, were withheld.

20 MR. VIND: That's correct. They were given to us,
21 but not listed on the affidavit.

22 CHAIRMAN LOCKYER: So, they're not listed, but maybe
23 someone at the copying machine --

24 MR. VIND: That's what I suspect.

25 CHAIRMAN LOCKYER: Well, I'm not sure what to
26 entirely make of that.

27 Did you want to add anything else, Mr. Vind?

28 MR. VIND: No, but Mr. Neil Kochler, I think, would

1 like to testify.

2 CHAIRMAN LOCKYER: Please, sir.

3 MR. KOCHLER: Thank you, Members of the Committee.
4 My name is Neil Kochler. I'm a partner in Parallel Products.
5 We are an ethanol producer in California. We convert waste
6 products in the food and beverage industry in Southern
7 California to ethanol and other value-added commodities.

8 I'm also Director of California Renewable Fuels
9 Council, which advocates on the behalf of not just ethanol, but
10 other renewable liquid fuels in the state.

11 To put some of this in perspective, we did meet with
12 Ms. Schafer shortly after she took her position to discuss some
13 of the issues relating to ethanol, and it's a very complex
14 issue. I don't want to go into all the technical issues, but
15 just to put it in some perspective, the Legislature for ten
16 years has supported the use of not pure ethanol, but ethanol
17 blends that Ms. Schafer claims are causing air quality problems
18 in California.

19 The Legislature most recently passed SB 1166, I
20 believe, two or three years ago, which put the volatility
21 exemption in the context of a performance standard that said in
22 that bill that unless it was shown that ethanol blends increased
23 the ozone-forming potential or nitrous oxide emissions of
24 ethanol blends relative to other fuels -- unreformulated until
25 '96, reformulated after '96 -- that the Legislature wanted to
26 continue to support the use of this fuel.

27 No study since then has shown that we have an
28 ozone-forming problem or NO^x problems that has been funded by

1 the Air Resources Board. In fact, the most recent study, a low
2 oxygenate study that was just released, had a very limited data
3 set, seems to suggest quite the contrary. That, contrary to the
4 conventional wisdom, that ethanol blends at low levels do not
5 increase NO^x, and that due to reactive benefits, it has not
6 shown that there is an ozone problem.

7 So, we feel very strongly that we are still complying
8 with the intent of the Legislature to market our fuel in such a
9 way that maintains not only the status quo, but offers a better
10 environmental solution to the reformulation of gasoline in
11 California.

12 Because these issues are so critical, and there is an
13 ongoing process to try to understand changing science, we met
14 with Ms. Schafer to say we'd like to cooperate with you to do a
15 modeling study that will try to put to rest some of these
16 unresolved questions. We'll work with you to develop the
17 protocols. We will all live by the results.

18 There, in a letter to me, has been a commitment to
19 cooperate with us in that study.

20 So, you can imagine my extreme surprise and
21 disappointment that -- when that -- that both CARB and Cal-EPA,
22 while we thought we had the technical track to, in good faith,
23 review the current science and to move towards the most
24 environmentally beneficial use of our fuel, that suddenly, we're
25 dirty, and that both CARB and Cal-EPA go on the record with
26 extremely strong, misleading remarks about how our fuel will
27 increase ozone, something that has not been shown.

28 And I think Secretary Strock, his affidavit refers to

1 our fuel as causing irreparable harm to the health of California
2 citizens. Well, I feel very strongly today that his remarks and
3 the remarks of CARB are causing irreparable harm to the growth
4 of our industry in this state.

5 If we talk about economic growth opportunities, I
6 know I applied the Chairwoman's desire to try to find the
7 balance between economic development and environmental
8 protection, and that also is why we're shocked that this
9 position has been taken, because there aren't any new oil
10 refineries being built in the State of California.

11 We are at the cutting edge and at the brink of being
12 able to convert a huge variety of primary end-waste products
13 into ethanol in this state, and bring to this state tremendous
14 new economic growth in jobs and industry. And that -- it's very
15 difficult to strike a balance between economic development and
16 environmental protection. We feel that we're the kind of
17 industry that the State Air Resources Board should be throwing
18 their arms around due to our ability to both provide clean air
19 benefits and economic development.

20 So, we feel very strongly that we have not been dealt
21 with in an even-handed manner. That while we are constantly
22 being told that the state is fuel neutral, that given the
23 comments that were made by the prior witness, and given this
24 history that I've presented here, it sure feels that there is no
25 fuel neutrality, and that, in effect, the oxygenate MTB produced
26 by the oil companies seems to be the oxygenate of choice for the
27 Air Resources Board for reasons that we cannot understand.

28 I also feel that we are in a a strong fight between

1 the major oil companies and the ethanol industry. The oil
2 companies, major oil companies, for purely self-serving reasons,
3 certainly reasons you cannot fault them for, do not want to see
4 ethanol in their fuel because they do not produce it.

5 Ethanol is more of a radical fuel in that it is a
6 decentralized fuel, and it does not fit into the typical control
7 structures of the major oil companies. So they, even though we
8 represent a very minor portion of the fuel sold today, the oil
9 companies have spent many millions of dollars and time trying to
10 keep ethanol out of their fuel.

11 It was extremely alarming to us to see California's
12 environmental regulatory agency siding with the oil companies
13 against our fuel. That does not seem to me to be fuel neutral.

14 We do not question the qualifications of Ms. Schafer.
15 If she were confirmed, we would continue to work with her, but
16 somebody has to be accountable for the activities that have
17 surrounded the very unorthodox opposition to this rule.

18 This was an opportunity to bring our concerns public,
19 and see if we can't find out what exactly is going on here.

20 Thank you very much.

21 CHAIRMAN LOCKYER: Thank you.

22 Senator Craven.

23 SENATOR CRAVEN: Thank you, Mr. Chairman.

24 I enjoyed your remarks. They're very, very cogent,
25 certainly, as was the gentleman who preceded you.

26 I have a feeling that either you or I have
27 misunderstood some of the comments made by this lady. I didn't
28 get the impression that she was opposed to ethanol. As a matter

1 of fact, I recall when she said words to the effect that: we
2 see nothing wrong with it, and it's good for this and good for
3 that.

4 I think that what she said at some other time,
5 perhaps close to those remarks, was: the thing that we're
6 concerned about is its volatility when combined with gasoline,
7 which creates a problem from its burning, exploding, whatever.

8 That's the way I recall that. Now, maybe I'm wrong
9 on that, and if I am, you correct me.

10 But she didn't give me the impression that they
11 wanted to do away with it completely. I don't see how that they
12 could maneuver, sub rosa or any other way, with the oil
13 companies against your product. Wouldn't that be a conspiracy
14 which could be, you know, challenged under the law, and a
15 violation of the law?

16 Now, tell me if I'm wrong in what I've said. I've
17 been out where they produce ethanol. I know a little something,
18 very little, but I do know something.

19 MR. KOCHLER: My basic response would be that it is
20 true that the Air Resources Board and the Energy Commission have
21 supported the use of ethanol used pure in engines. There is no
22 controversy as to the significant air quality benefits.

23 There has been or there are controversies surrounding
24 the low level use of ethanol in gasoline. There is a strong
25 volatility increase when you use small amounts of ethanol.

26 What is not stated anywhere in the public documents,
27 either the testimony to the docket on the part of CARB to EPA
28 commenting on the renewable requirement, or in Mr. Strock's

1 affidavit, is that there are three or four other benefits in
2 terms of reduced tail pipe emissions, lower reactivity, lower
3 carbon monoxide, all of which when looked at as a whole, appear
4 to at least reverse the increase in volatility, if not produce
5 cleaner fuel than the alternative.

6 That is why the Legislature, in their wisdom, passed
7 SB 1166, which holds us to this performance standard.

8 Granted, it gives us an exemption which we need to
9 blend our fuel in gasoline to be commercially viable because the
10 oil companies will not produce a tailor-made fuel out of
11 ethanol.

12 If it is shown that we do increase ozone, if we do
13 increase NO^x, relative to the next fuel, then we lose our RVP
14 exemption. The Board has not made that demonstration, so why
15 would they then be going public, saying that we are increasing
16 ozone in California? There's a discredit there between --

17 SENATOR CRAVEN: You know, when you were stating the
18 assets of the product, I'm willing to buy that. I have no
19 problem with that at all.

20 But one thing that I forgot to say was the fact that
21 it was said that the use of ethanol in the gasoline situation
22 not only has a volatility problem, if you will, but also that
23 which it produced into the atmosphere was something that would
24 cause the agency, if you will, to be fined by virtue of what it
25 produces, so that they would have to really, if they chose to
26 let it go, they would suffer by virtue of a penalty from a
27 higher authority, presumably the feds.

28 MR. KOCHLER: Well, if this is the fed rule, then the

1 fed went to great extents to ensure that the use of ethanol in
2 the renewable rule would not cause such a problem. And all such
3 provisions in the renewable requirement that went way far beyond
4 what was needed to ensure --

5 SENATOR CRAVEN: I think I've caught you on a day
6 when you like the feds. However, I wonder if you always feel
7 that way with the regulations under which you must live, which
8 must be very onerous at times.

9 MR. KOCHLER: Certainly.

10 SENATOR CRAVEN: So, in other words, it's kind --

11 MR. KOCHLER: We're just asking for a fair hearing.

12 SENATOR CRAVEN: That's what you should have.

13 MR. KOCHLER: We feel that through the politics of
14 this particular issue, that a very promising new industry in
15 renewable resources in California has been unfairly treated.

16 SENATOR CRAVEN: Have you spoken to Ms. Schafer about
17 this?

18 MR. KOCHLER: There have been -- most of the -- we've
19 had two meetings with her. Most of the recent problems have
20 been associated with statements from Cal-EPA. It's been
21 frustrating because we've approached people both at the
22 California Air Resources Board and Cal-EPA, most of whom
23 distance themselves from the remarks of Mr. Strock. It's been
24 hard to find who really wrote the affidavit.

25 That's been part of our frustration, because there
26 were some statements that were made by Secretary Strock that, I
27 feel very strongly, go far beyond what the technical analysis
28 provided by CARB staff would support.

1 SENATOR CRAVEN: I appreciate your candor and thank
2 you very much.

3 MR. KOCHLER: Thank you.

4 SENATOR CRAVEN: I'll take the liberty of having you
5 come up to testify in the absence of our Chairman, who probably
6 will return very shortly. He's trying to work both sides of the
7 street, running the House as well.

8 Please state your name.

9 MR. WHITE: Mr. Chairman, Members, my name's John
10 White. I'm representing the Sierra Club.

11 I regret that I'm here today to oppose the
12 confirmation of Ms. Schafer as Chair of the Board.

13 Before going into my reason, I would like to clarify
14 that, for the record, if we want -- we won't have too much
15 further discussion about ethanol -- that the environmental
16 community in Washington was, I think, largely opposed to the
17 mandate, which was the subject of the lawsuit. So, in this
18 case, there was agreement. Not often is that the case between
19 the oil companies and the environmental community with respect
20 to that mandate.

21 That's not what I came here to talk about, but I did
22 feel that in light of the earlier discussion, it was important
23 that we make clear that while we have disagreements with
24 Ms. Schafer on some things, this is not among them.

25 Our concerns are primarily with the lack of
26 performance in the agency since Ms. Schafer's appointment. We
27 have found her to be accessible, and personable, and qualified
28 in terms of her background. But we are troubled by the trends

1 that we've seen, particularly in recent weeks, of a preference
2 for avoiding some of the key responsibilities that need to be
3 undertaken.

4 Senator Ayala's questions earlier about the truck
5 smoke enforcement suspension, I think, are illustrative of that
6 concern.

7 Also with respect to the FIP, I think that the
8 contrast we would have -- we would point to is, even though we
9 were on the other side of the Legislature's proposed compromise
10 with EPA on smog check, unlike in the case of the FIP, the
11 Legislature and the administration did propose an alternative to
12 what they objected to the EPA proposing. And until today's
13 hearing, we really hadn't had an indication that the
14 administration was prepared to propose a detailed response to
15 the Federal Implementation Plan. And that's crucial because the
16 things that are in that Federal Implementation Plan are things
17 that would be onerous for California, and we believe that the
18 primary mechanism for avoiding that confrontation with the
19 federal government is by actions of the California Air Resources
20 Board.

21 There's been references to the number of efforts
22 under way to develop alternatives. The silence from the Board
23 in respect to those efforts has been deafening.

24 We also are troubled, having, I think, witnessed the
25 strong leadership over the last 20 years through multiple
26 administrations, going back to Ronald Reagan's time, the Air
27 Resources Board has been a leader. Senator Petris had a bill,
28 as I recall, that got us all started down this road with an

1 effort --

2 SENATOR PETRIS: Up this road.

3 MR. WHITE: Up this road, and we've had bipartisan
4 support. We have had good strong technical leadership.

5 But what's been lacking, I think, in the recent
6 months of this administration is the degree of independence that
7 this agency has enjoyed over its history. We are troubled by
8 the interventions, regular intervention, it appears, with
9 Cal-EPA. We think that the rhetoric on the FIP that the
10 Governor and Secretary Strock have been evincing is not helpful,
11 and it, I think, makes the Air Board's job more difficult.

12 And we appreciate the Committee's questions that have
13 been asked. We think they're helpful, and we believe that there
14 needs to be some clear signal that we're going to move towards
15 collaboration and the resolution of these issues, because
16 they're too important to be allowed to continue.

17 We would like to associate ourselves with some of the
18 earlier remarks of witnesses lauding the continuation of the
19 electric vehicle mandate. We think that was important, but what
20 we really think is that the heavy-duty vehicle standards and
21 off-road vehicle standards, which are at the heart of the FIP,
22 need to get the same priority that the electric vehicle program
23 has gotten, and it hasn't been the case. So, we're troubled by
24 that.

25 Those are my remarks.

26 SENATOR CRAVEN: Very good, Mr. White.

27 Let me ask a question, if I may. I realize that the
28 Sierra Club is a very vast organization with tremendous

1 membership.

2 Do they have someone with technical expertise in the
3 field in which we are speaking to advise them as to the
4 negatives or the positives in anything that you are talking
5 about?

6 MR. WHITE: Yes, we have --

7 SENATOR CRAVEN: Do you know? I mean, are you a
8 technician?

9 MR. WHITE: Only by rote, I think. I have worked on
10 these issues for some time. I'm not --

11 SENATOR CRAVEN: I'm not implying that --

12 MR. WHITE: Oh, no, and there are people with whom I
13 converse on a regular basis, and who the Board -- for example,
14 the volunteer leadership of the Sierra Club with whom I was
15 consulting on this particular issue includes physicists,
16 chemists, scientists, as well as advocates. So, I think we
17 bring a degree of commitment to these issues, but we also have
18 issues where we disagree.

19 We disagreed with the previous Board Chair from time
20 to time, and in other administrations we've had occasional
21 disagreements.

22 I think our concern here is that a pattern has begun
23 to emerge that we find troubling.

24 SENATOR CRAVEN: I can understand that. You're
25 entitled to your opinion, as I am mine.

26 When I hear Sierra Club, I think of trees. They have
27 nothing, to me -- well, maybe they do have something to do with
28 clean air, come to think of it, but that's a rather tenuous tie,

1 is it not?

2 MR. WHITE: It is, Senator Craven. However, we have
3 also been involved with almost every major air quality issue in
4 this state over the last 20 years.

5 SENATOR CRAVEN: That's fine. That's to your credit.
6 But endorsement is not necessarily knowledge.

7 MR. WHITE: Indeed, indeed.

8 SENATOR CRAVEN: Very good, fine. Let's have lunch
9 someday.

10 Anyone else? Yes, Senator Petris.

11 SENATOR PETRIS: I'd like to ask Mr. White. I've
12 read his letter dated today, which I think for the Sierra Club
13 is unusually deferential to people who've been traditionally
14 opposed to our air pollution control program in their
15 nearsightedness in treating it as a 100 economic issue,
16 particularly under Governor Deukmejian. He felt that it wasn't
17 any business in the state that could ever do any wrong at any
18 time, and therefore, any bill that tended to offer some kind of
19 regulation and correction was anathema and he vetoed them, time
20 after time. That was his pledge in the campaign.

21 However, he also, under his tenure, did some good
22 things. I think your letter should be viewed in that context,
23 because you are giving credit to him and to Governor Reagan.

24 Let me just quote in part that you're troubled
25 because Ms. Schafer, according to the view of the group, has not
26 maintained that independence and the bipartisan spirit that
27 prevailed prior to her, where other Chairs had been appointed by
28 conservative Republican governors.

1 You're contending, and I'm quoting now:

2 "She has not maintained the tradition of
3 independence and scientific excellence
4 which, since Ronald Reagan's time, has
5 been the source of the Air Resources
6 Board's bipartisan support and worldwide
7 reputation in the control of vehicular
8 emissions and developing advanced
9 technologies. Instead, she's become an
10 instrument of unprecedented politicization
11 of California's air quality problems by
12 the Wilson administration."

13 I gather from that, you're claiming there's a major
14 change of direction in the policy, unprecedented, which did not
15 occur under the prior conservative Republican governors who,
16 although they may have disagreed, we all know they disagreed to
17 some extent, they felt that the mission of this Board was so
18 important to the health of the people of California in order to
19 maintain air quality, that they kind of kept their hands off.
20 And they appointed people who maintained an independence, and
21 who followed the mission of the Board as set forth in the
22 statute that created it.

23 Does that summarize your position?

24 MR. WHITE: That's correct, Senator. It is with some
25 reluctance, because we have found, again, things to like about
26 Ms. Schafer, and have not found her unapproachable. But we have
27 felt that there has been a transition and a change from the
28 previous history, and we felt that was grounds for making this

1 view.

2 SENATOR PETRIS: Thank you.

3 SENATOR CRAVEN: Thanks, John.

4 State your name, please.

5 MR. MARKIN: Mr. Chairman, Members, my name is Tom
6 Markin, Director of California Governmental Organizations for
7 ARCO.

8 I'm sorry for testifying out of turn. I'm not
9 opposed to Ms. Schafer's confirmation, but I felt it appropriate
10 to discuss the oil industry's side of the ethanol controversy
11 that folks have tried to surface today.

12 SENATOR CRAVEN: Fine, if you can do it without
13 making it too lengthy.

14 MR. MARKIN: Absolutely.

15 What is at issue is whether or not California should
16 comply with the federal EPA's mandate on ethanol use in gasoline
17 in the winter time. We are required to use some compound to
18 boost the level of oxygen in the winter of our gasoline so that
19 it will be lower in its emissions of carbon monoxide, and we've
20 been doing that for a couple of winters now.

21 ARCO has used both ethanol-based and methanol-based
22 additives. We appreciate the flexibility provided in using both
23 types because it allows us to buy this additive at the lowest
24 price possible. Therefore, our gasoline can be sold at the
25 lowest price possible. That's ARCO's market niche, and that's
26 why people go and buy their gasoline at ARCO.

27 So, we opposed the mandate that a fixed percentage of
28 that oxygenate be ethanol-based fuel. We prefer to be fuel

1 neutral, and we truly see a need for that neutrality. And I
2 know you've heard that term used a lot today, but in our minds
3 what that means is that the Air Board's setting standards for
4 the composition of gasoline, and then allow the industry to use
5 the components that they can to make that standards as cheaply
6 as possible, because that's in the best interests of the driving
7 consumers of California.

8 So, when we say we want these rules to be fuel
9 neutral, that means set a standard and allow the market to
10 determine the components that go into that fuel.

11 The Air Board scientists have calculated that the
12 incremental emissions of using ethanol per the U.S. EPA standard
13 would be 20 tons a day volatile organic emissions. We have no
14 reason to question those calculations. In fact, I believe our
15 scientists would concur that there are additional emissions
16 associated with the statewide use per the U.S. EPA standards.

17 Ethanol is taxed differently than methanol-based
18 fuels, and there is another calculation that says the state
19 would lose approximately \$60 million annually in gasoline tax
20 related revenues. That is another reason for the administration
21 to be concerned about enacting this type of policy.

22 But we applaud the Air Board's application of a fuel
23 neutral policy on oxygenation. We think it was the right
24 decision. We think it meant that the cleanest gasoline is going
25 to be made available in plentiful quantities, at the lowest
26 price, with fair tax treatment. We see nothing wrong with CARB
27 adding in quantifiable numbers onto an American Petroleum
28 Institute lawsuit to try to get the EPA to reconsider this rule.

1 So, I think if you cut through some more rhetoric,
2 they're doing it to make sure we can buy clean fuel, enough of
3 it, and at the lowest price possible.

4 SENATOR CRAVEN: Fine. Senator Ayala, did you have a
5 question?

6 SENATOR AYALA: I didn't have one, but I wanted to
7 clarify a point that I think he said.

8 He said let the marketplace determine the different
9 ingredient that goes into our fuel, or something like that?

10 MR. MARKIN: Yes, Senator. The specification is how
11 much oxygen must be in gasoline in the winter, and there's a
12 minimum amount that must be in there. We can use a number of
13 different materials to achieve that. One is called MT ethanol.

14 SENATOR AYALA: Regardless of the health risk
15 involved?

16 MR. MARKIN: I don't --

17 SENATOR AYALA: Because we don't want to pollute the
18 air, and if you use certain fuels, it doesn't make any
19 difference what the health risk is as long as the marketplace
20 determines what different fuel you're going to use?

21 MR. MARKIN: The health risk at target, Senator, is
22 the carbon monoxide emissions when you burn this fuel. In the
23 winter, that's more of a problem because of atmospheric
24 conditions. So if you add oxygen to the fuel so it can burn
25 more completely, so that you wind up having lower carbon
26 monoxide emissions, and many of these additives will achieve
27 that.

28 SENATOR AYALA: I understand that, but I don't think

1 the marketplace should determine the different ingredients, and
2 to heck with the health risks involved. I think that they
3 should determine if the health risk is within its affordable
4 uses and that people can live with that. I don't think they can
5 just let them go and let the marketplace and economy decide
6 whether they use any kind of fuel or not, specially in my
7 district, which is part of the most polluted area in the
8 country.

9 MR. MARKIN: Senator, regardless of the oxygenate
10 used, the tail pipe emissions are relatively the same.

11 What is at issue is, when using ethanol, sometimes
12 the evaporative emissions from the fuel system may be greater
13 than if we had used a methanol-based additive.

14 SENATOR AYALA: Okay, thank you.

15 SENATOR CRAVEN: Senator Petris.

16 SENATOR PETRIS: I'm interested in the comment about
17 the marketplace. We hear that a lot up here. Industry doesn't
18 like us get in their hair, so they say: let the market do it.

19 If the marketplace were working the way you content,
20 there wouldn't have been one statute in this field. As was
21 pointed out early on, I've carried a lot of legislation relating
22 to air pollution. At that time, the industry said there wasn't
23 any problem. The oil industry came in and said, sat where
24 you're sitting, and said there's no problem. The automobile
25 industry said there's no problem.

26 Finally, when the scientific evidence came in, and
27 the number of deaths were calculated, especially in Southern
28 California, including Senator Ayala's district, they said,

1 "There is a problem, but we're not contributing to it. It's not
2 our problem."

3 And that way, they buy time, and they buy time. They
4 keep the government away, and get another year, two years, three
5 years. Finally they say, "Well, apparently there is a problem,
6 but we should solve it, not you." So that buys them another
7 three years, and more people die.

8 I find that attitude unacceptable. I think it's
9 arrogant. I think it's insensitive. I think it reflects a
10 great deal of greed.

11 Now, I'm not talking about you personally. I realize
12 you're the guy here speaking on behalf of some people.

13 But if the marketplace worked the way industry
14 contends, when my bill went in, there would have been a mad rush
15 to be the first company to clean it up, clean up the fuel, and
16 then say to the public, "Hey, we're not selling this dirty stuff
17 that Petris is hacking at us about. We're selling the clean
18 stuff." And those companies, or that company, would have made a
19 fortune in doing it and got a tremendous amount of good will,
20 and the others inevitably would have had to follow.

21 But we didn't see that. We didn't see that. They
22 didn't see the competition. We saw a unanimous position by all
23 the companies, just like you drive down the street go to a
24 station, the chances are it doesn't matter which station you go
25 to from the standpoint of the consumer's cost, gasoline's the
26 same price. The variation is very, very little until there's
27 some kind of a gasoline war and somebody breaks ranks, and that
28 lasts a short time, then they go back to the prior.

1 So, I get very nervous and skeptical when I hear:
2 well, the marketplace will take care of it. We've had so many
3 problems that could have been solved without our interference.
4 And some people in the private sector think we're whistling
5 around here, figuring out ways to jump in, to interfere.

6 We'd rather stay out. It's that attitude that drags
7 us into the fight. For God's sake, how long are we going to
8 have senior citizens dying of heart disease aggravated by air
9 pollution in the L.A. Basin? That's why we went in.

10 I put the first bills in because doctors asked me to
11 do it, my own personal physician and a lot of public health
12 doctors. They pointed out to me that the fastest rising health
13 menace in California at that time was due to air pollution.

14 Why should we have to jump into that? Why couldn't
15 the industry take care of that? They didn't give a damn, that's
16 why. They were in a state of denial for so long that we were
17 compelled.

18 I remember Rumford way before the name was famous.
19 You know, he was a pharmacist, and he knew something about
20 health. He was Chairman of the Public Health Committee, and he
21 was the first one who started whittling away at that before I
22 ever got up here.

23 Anyway, I just wanted to explain my reaction to kind
24 of inviting us to turn everything over to the competition in the
25 marketplace. It's just not going to happen.

26 MR. MARKIN: Senator, I hope you understand, let the
27 marketplace decide is related to the additive that we use in the
28 winter to our gasoline to achieve the standards set by the Air

1 Resources Board, and we have a couple of choices on what type of
2 material we use. They'll all meet the standard.

3 What we desire is the choice to choose among those
4 alternatives so that we don't have to unnecessarily pass along
5 the cost in our product.

6 SENATOR PETRIS: Even on that, are you talking about
7 the ROR, and what happens in the winter months?

8 MR. MARKIN: Yes, sir.

9 SENATOR PETRIS: The only report that came out of the
10 Board was way back in 1987, and they talked about the summer
11 effects. They didn't say anything about any problem in the
12 winter. And they were supposed to have studied this. Maybe
13 they did, I don't know, but their report doesn't reflect it.

14 MR. MARKIN: I'm not the one that did these numbers,
15 but I believe that, based on the last two winters, we've seen a
16 real good improvement in the carbon monoxide emission in the
17 air, in some part due to the programs.

18 It's an effective program --

19 SENATOR PETRIS: I hope so.

20 MR. MARKIN: -- and we're simply advocating that we
21 be allowed to choose from a menu of additives.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN LOCKYER: Let me ask if there others who
24 wish to comment? Anyone else that wishes to make a comment?

25 Are there Committee Members?

26 MS. GIBSON: We're here to support the confirmation.
27 Thank you for the opportunity to speak.

28 I apologize for speaking out of turn.

1 My name is Evelyn Gibson, and I represent the
2 California Independent Oil Marketers Association.

3 CHAIRMAN LOCKYER: We heard from them earlier.

4 MS. GIBSON: Oh, you have, okay. We're somewhat
5 disorganized today.

6 CHAIRMAN LOCKYER: Well, you're already on the
7 record.

8 MS. GIBSON: Thank you very much.

9 CHAIRMAN LOCKYER: Thank you.

10 SENATOR PETRIS: Mr. Chairman.

11 CHAIRMAN LOCKYER: Senator Petris.

12 SENATOR PETRIS: I want to apologize for being tardy.
13 I'd like to ask the nominee about another field in
14 which I've been interested for sometime, and that's pesticides.

15 The evidence is growing that pesticides and other
16 chemicals used by agriculture are a major source of volatile
17 compounds that contribute to the creation of ground level ozone,
18 smog. The EPA at the federal level in the FIP plan estimated
19 that they may contribute 10-15 percent of the VOCs in
20 agricultural regions like Sacramento and the San Joaquin Valley.

21 If that's accurate, it's an extremely large source
22 that's not currently regulated or controlled. I'm interested in
23 the Board and your attitude regarding addressing this problem of
24 pesticides. It seems to have been ignored by the Board.

25 I know there's a lot of things to worry about, and
26 there's plenty to do. It's not like there's nothing to do.

27 I would appreciate some comment from you relating to
28 the pesticide menace that we have in the agricultural areas of

1 the state.

2 MS. SCHAFER: Now that we have succeeded in reducing
3 emissions from stationary sources and mobile sources, such as
4 light duty vehicles, through the programs we've been discussing
5 and implementing over many years, the remaining sources
6 obviously now appear to be a larger percent of the contribution
7 to the problem.

8 Certainly it's evident that pesticides containing
9 volatile organic compounds could be a significant contributor
10 that should be addressed. The EPA's plan proposes to address
11 this in one way; however, we have been working with the
12 Department of Pesticide Regulation even before the Federal
13 Implementation Plan came to fore to develop a statewide
14 regulation --

15 SENATOR PETRIS: How long?

16 MS. SCHAFER: It's been going on since last year at
17 least, but I know that they've been meeting and are trying to
18 develop a regulation for California.

19 One of the first jobs that needs to be done is to get
20 an update on the inventory. The inventory that we have, the
21 baseline information that we have, is a bit out of date because
22 patterns of use change over the years. So, we're working with
23 the Department of Pesticide Regulation, which has primary
24 authority to regulate pesticides and their pesticidal use, in
25 developing a statewide regulation with part of our State
26 Implementation Plan and proposed to be forwarded to the EPA as
27 one of the SIP measures.

28 The DPR is taking the lead, but we are giving them,

1 significant assistance in trying to update the inventory and to
2 develop a regulation that will achieve significant reductions,
3 in the order of the 20-45 percent that EPA had identified, but
4 do it in a way that will allow us to optimize the use of
5 pesticides, particularly not to penalize those that may be used
6 in a very small amount, but which may have a high VOC content.
7 We're trying to come up with a program that will get the overall
8 benefit, but do it in a way that doesn't disadvantage any one
9 part of the agriculture community over another.

10 SENATOR PETRIS: So, I am to believe that you do have
11 a plan, and you are attempting to address that?

12 MS. SCHAFER: Absolutely. It's being developing now,
13 but we're trying to first update inventory information so that
14 we can identify where this material is coming from.

15 But the regulation we would propose would go into
16 effect in about the same time frame as what EPA was proposing,
17 but this would be one that's drafted here in California.

18 SENATOR PETRIS: Did you do independent monitoring or
19 studying of the EPA publications of the most hazardous
20 pesticides?

21 By law, they're required to publish and go after
22 those and try to eliminate. Last year, the Governor pulled off
23 the list one of the most devastating of all. I don't remember
24 the name of it. In fact, I've never remembered the chemical
25 names for these things, having been totally ignorant about the
26 chemical world except the impact it's having on our farmworkers
27 and others.

28 Did your Board look into that, removal of that

1 particular pesticide when that was done? It was either last
2 year or early this year.

3 MS. SCHAFER: I don't have any personal knowledge
4 about that particular chemical.

5 As I said, the Department of Pesticide Regulation
6 does regulate pesticides and their pesticidal use.

7 Our involvement would be if, after the use of this
8 pesticide had taken place, to make sure that emissions are
9 captured and not migrating to have an impact on the public
10 health, and I know that our people would be involved to the
11 extent that that might be a consequence.

12 SENATOR PETRIS: How do you do that? Can you walk me
13 through that? Do you have inspectors roaming around the state?

14 MS. SCHAFER: Actually, the Air Board -- the
15 authority for actually regulating pesticide as an air pollutant
16 is, in California, perfectly reserved to the local district, the
17 air quality management district.

18 However, we certainly provide technical information
19 and guidance about developing regulations to deal with those as
20 a general guide for consistency around the state.

21 SENATOR PETRIS: It comes under your general mission,
22 doesn't it, of air quality?

23 MS. SCHAFER: Yes, sir, under our general mission,
24 that's correct. But we do in California share responsibility
25 with the local districts in this area and in the area of
26 stationary sources.

27 On the flip side of that, our responsibility are the
28 consumer products, for example, or the motor vehicles, the Air

1 Board takes the lead. So, that's a split responsibility.

2 SENATOR PETRIS: Whose scientists are there? Which
3 scientists are primarily responsible for doing this? Is it the
4 Division of Registration, is it the EPA, is it your shop, or is
5 it a little bit of each?

6 MS. SCHAFER: It's a little bit -- the way the staffs
7 work in California, there's a little bit of each, for those
8 areas where we have primary responsibility, we do have
9 scientists who are capable of looking at the air quality impact
10 of pesticides after they are used.

11 SENATOR PETRIS: If I want to use -- let's say I've
12 developed a new pesticide that I want to use in agriculture. I
13 go to the Division of Registration, Pesticide Regulation and
14 Registration. I have to get their approval, right?

15 Now, do you look into that at all, any of that
16 process?

17 MS. SCHAFER: I don't believe that we have a
18 responsibility in regulating the use of pesticides. First of
19 all, under the federal law, EPA registers pesticides for use, so
20 they have a whole scientific infrastructure for handling that as
21 well.

22 However, if there is a pesticide, after it is used,
23 released into the atmosphere, then we would have a concern, and
24 we would have scientists working with the local districts on
25 addressing those problems.

26 SENATOR PETRIS: So, the alarm, I guess, would be
27 sounded by the local district in a given area. It wouldn't be
28 primarily yours?

1 MS. SCHAFER: If it is -- yes, that's where the
2 authority currently lodges, the way that we have written rules
3 here in California.

4 SENATOR PETRIS: I understand you're very determined
5 to make sure there's a proper balance between the economic
6 interests that are involved and safety. Some of us critics
7 sometimes have felt that the administrations have come down too
8 quickly on the side of the economic interests and at the expense
9 of the public health interest.

10 That's why I'm wondering, and that's why I'm asking
11 these questions about just what does your group do compared to
12 the others, and where do the scientists come in.

13 We've had some pretty bad episodes for awhile in
14 which the Pesticide Regulations scientists, who were top-flight
15 and admired by all who knew the program, had their
16 recommendations reversed by another level, presumably on the
17 economic issue. We felt at the time it was political pressures
18 and responding to political friends.

19 So, we had some notable scientists who had worked
20 very diligently to make certain that we were going in the right
21 direction, and who would recommend in some cases that a
22 particular pesticide be rejected: "We should not use this
23 pesticide in California for the following reasons. Our tests
24 show this, and this, and this, and that."

25 The political guy upstairs would reverse that and
26 say, "Go ahead and sell it."

27 About 18 of the scientists quit. They said, "Our
28 mission has been totally undermined by the political side of the

1 administration."

2 So, the reason for my question is that I'm wondering
3 if there are safeguards against any kind of repetition like
4 that, because this administration has been more partisan in this
5 area than the last one and the one before.

6 MS. SCHAFER: I'd like to confine my comments to
7 those matters under the jurisdiction of the Air Resources Board.
8 And so in my area, I can assure you that we have continued the
9 tradition of staunch regulatory advancement of what we call
10 technology forcing regulations to meet our air quality goals,
11 and those are the health protective goals that underlie all of
12 the standards.

13 I have no experience with any intervention in the
14 decision making process of the Board. We have upheld our low
15 emission and zero emission vehicle standards which we believe
16 are the fundamental underlying reasons for the achievement that
17 we have been able to have in the last 20 years of improvement in
18 air quality in Southern California. Exposures in Southern
19 California have been reduced 50 percent.

20 The issue before us now is how we're going to get the
21 rest of the way there between now and 2010, which is the goal
22 the Clean Air Act has set for us in Southern California. And
23 the formula that we've found, and the Wilson administration
24 supports it strongly, is one that is technology oriented,
25 combining the vehicles and the fuels as a system, and being as
26 encouraging of new technological advancement as we possibly can
27 be.

28 And I think we have a strong foundation. I certainly

1 don't want to take credit for a lot of the regulations that have
2 passed before my time, but I can assure you that I sill stand
3 firm in pursuing the the standards with the best scientific and
4 technical staff in the world. Everyone realizes that, and has
5 acknowledged that, and has reminded me of that, that are lodged
6 at the California Air Resources Board.

7 So, I think that we have the capability of reaching
8 towards the rest of the work that needs to be done, and I'd like
9 to pledge my cooperation with this Committee and the rest of the
10 Wilson administration to see this through.

11 CHAIRMAN LOCKYER: We've heard, Senator, this
12 particular slogan a number of times during the course of the
13 morning: the technology driven solution. It sounds a bit like
14 the magic wand that's going to help us avoid making difficult or
15 unpopular decisions.

16 So, since the Senator began asking about pesticide
17 rules, and I understand you had commented earlier on sort of the
18 need to assess effective strategies, that there's the NO^x side
19 of the equation, there's the organic compounds side, and you're
20 trying to assess the most efficacious approach.

21 If EPA, federal EPA, is right, that perhaps in our
22 large agricultural zones that organic compounds resulting from
23 pesticide emissions could be as much as 10 or 15 percent of the
24 problem --

25 MS. SCHAFER: In certain areas.

26 CHAIRMAN LOCKYER: Yes. What have you done about
27 that?

28 MS. SCHAFER: We're developing a regulation -- we're

1 ahead of where EPA would be in developing its regulation -- for
2 the effective control of the volatile organic compounds that are
3 found in pesticides.

4 CHAIRMAN LOCKYER: So this is another work in
5 progress.

6 MS. SCHAFER: As EPA's is, yes, sir. This is an area
7 which has not previously been addressed in either federal or
8 state regulation.

9 But as we achieve better and better control of the
10 traditional sources and the larger sources of air pollution,
11 what we see emerging is the remaining sources. And that's our
12 task before us, to plan for that, and then to work on that over
13 the next 25 years, which is that attainment period Congress has
14 given us.

15 CHAIRMAN LOCKYER: Other questions, Senator?

16 SENATOR PETRIS: Well, that leads to the basic
17 question, who's going to be in control and in charge? Is it
18 going to be the Department of Pesticide Regulation, which in the
19 past, it's kind of evolved into a voluntary thing. The ARB
20 isn't voluntary. When they say you've got to have a certain
21 number of electric cars by a certain year, the only volunteers
22 are going to rush out and buy the car now. But apart from that,
23 it's a position of a mandate on the industry.

24 So, that's why I'm asking the questions. Are you
25 folks going to really be in charge ultimately, in view of the
26 history we've had in the other areas, the other agencies, or
27 not?

28 MS. SCHAFER: As I said, the jurisdiction in

1 California is split among a number of authorities.

2 Because the Department of Pesticide Regulation has
3 the primary responsibility for regulating these products in
4 their use, they are taking the lead. We are working
5 cooperatively with them, and they have pledged to produce a
6 regulation over the course of the next year which we can then
7 submit to EPA as part of the State Implementation Plan.

8 We fully appreciate that that's a practical way of
9 handling the authority split on this issue, but I think they're
10 going to get the VOC reductions that we require as a result of
11 it, and therefore it's probably a very good way to go.

12 SENATOR PETRIS: My final point, Mr. Chairman,
13 there's an impressive list of letters, strongly urging approval
14 of Ms. Schafer's nomination.

15 What makes me nervous is, they come from the industry
16 that's being regulated. If we've got a very vigorous enforcer,
17 looking out first of all for the consumer's interest and the
18 health, chances are those companies would be opposing such a
19 policy.

20 So, that's why I have a little skepticism here and
21 I'm raising these questions.

22 MS. SCHAFER: I hope that you will find some
23 environmental groups among that list, too, Senator. I believe
24 there are --

25 SENATOR PETRIS: There is one.

26 MS. SCHAFER: There are at least four that I'm aware
27 of. I hope you have the full list.

28 SENATOR PETRIS: Only three or four? Better than

1 nothing; isn't it?

2 MS. SCHAFER: They're pretty impressive
3 organizations.

4 SENATOR PETRIS: I remember one that I read is the
5 one that I've had a great deal of admiration for over a period
6 of many years, and that's a big plus.

7 MS. SCHAFER: Thank you, sir.

8 SENATOR PETRIS: Thank you.

9 CHAIRMAN LOCKYER: I guess we've heard all the
10 testimony.

11 Again, my suggestion to the Committee is that we take
12 the matter under submission, and act on it at an appropriate
13 time, later in the session.

14 Thank you for your assistance.

15 MS. SCHAFER: Thank you very much for the
16 opportunity, Mr. Lockyer.

17 CHAIRMAN LOCKYER: I think we have miscalculated how
18 much time these matters would take. I'm feeling a little like
19 the former chair. Everyone said, "Oh, this is great. You're
20 really whipping along," and here I am, taking a lot of time.

21 I think we perhaps need to make sure that any witness
22 that came from out of town about any of the nominations that are
23 before us has an opportunity to get their comments inserted in
24 the record. I think that would be appropriate.

25 Then there's at least Mr. Flournoy who, I guess, came
26 from out of town.

27 SENATOR CRAVEN: Mr. Dunphy also.

28 CHAIRMAN LOCKYER: Well, he's around all the time, I

1 think.

2 I'm trying to figure out how to manage our time so
3 that either a nominee or a witness from out of town can be
4 heard. Ms. Edgerton would be, I guess, another on that kind of
5 list.

6 Maybe what I should do is indicate that we'll hear
7 comments on Mr. Flournoy, on Ms. Edgerton, and then any other
8 witness that's out of town with respect to the other appointees,
9 but we'll release all of those appointees so that you can go get
10 some productive work done.

11 So, Mr. Dunphy and others, I apologize for the fact
12 that we've been taking as long as we have. So, Mr. Dunphy, and
13 Kozberg, and Sharpless, I would assume we would have to take up
14 a different day. We're working on coordinating our calendars to
15 find out when we could -- maybe in the mornings or something --
16 have an opportunity to do that.

17 Let me get back to Mr. Dunphy, Kozberg and Sharpless
18 about the appropriate time to call them forward.

19 If there are witnesses from out of town relating to
20 those, I think it'd be appropriate in a moment to get them on
21 the record, if there are such, about any of the appointees. But
22 we'll hear from the appointees at a different time.

23 Meanwhile, we'll go to Ms. Edgerton next, and then
24 Mr. Flournoy, and that will probably be it for today.

25 We'll take a five-minute break and let Member go to
26 the Floor, figure out what's going on there, and we should be
27 back in a few minutes.

28 [Thereupon a brief recess was taken.]

1 CHAIRMAN LOCKYER: Let me inquire of those present,
2 who is here to testify on the Edgerton nomination? For of
3 those. How about Flournoy? Just checking on who's here.

4 Let's call Ms. Edgerton to come up. Iron City
5 Fishing Club.

6 MS. EDGERTON: Is that the first question?

7 CHAIRMAN LOCKYER: I'm curious as to what it is, but
8 you'll probably tell us.

9 Why don't you go ahead and start with any general
10 comments that you would wish to make.

11 I'll note that I don't think there's any opposition
12 in our file.

13 MS. EDGERTON: Thank you, and thank you for staying
14 late today to let me get finished so that I can go back to Los
15 Angeles.

16 Mr. Chairman, Members of the Committee, I thank you
17 for the opportunity to appear before you in connection with
18 senatorial consent to my appointment to the California Air
19 Resources Board.

20 It's been a great honor and a privilege to serve for
21 the last nine months as a member of the California Air Resources
22 Board, and under the outstanding leadership of Chairwoman
23 Jacqueline Schafer.

24 My principal interest in connection with my service
25 on the Air Resources Board is to work with the Legislature,
26 California business, environmental groups, citizens, all
27 concerned with clean air, to achieve steady environmental and
28 economic progress for our state.

1 Prior to joining the Resources Board, I served as
2 Vice President of Cal-Start, a California nonprofit consortium
3 encouraging the development of an advanced transportation
4 technologies industry in California. As you know, California's
5 mission is to clean the air, create jobs, and increase our
6 state's economic competitiveness.

7 This fall, I will teach environmental law -- co-teach
8 environmental law with Professor Larry Berg as an adjunct
9 professor in the University of Southern California's Unruh
10 Institute.

11 Formerly, I practiced environmental law as a senior
12 attorney and consultant for the Natural Resources Defense
13 Council, specializing for almost a decade in coastal protection,
14 climate change, and clean air. My book, The Rising Tide, Global
15 Warming, and World Sea Levels, was published in 1991.

16 I currently serve on the board of the Environmental
17 Law Institute, Green Seal, the Climate Institute, and Mothers
18 and Others for a Livable Planet. In addition, I am alternate
19 commissioner of the California Coastal Commission, and a
20 participant in the California Environmental Technology
21 Partnership, and I formerly served on the Fuel Cell Subcommittee
22 of the Select Committee of Project California, which is part of
23 the California Council on Science and Technology. I am
24 especially committed to working to establish California as a
25 home base for fuel cell technology, which I expect to be a
26 premier clean air technology in the 21st Century.

27 Since joining the Board, I have been guided by the
28 explicit directives of both the federal Clean Air Act of 1990

1 and the California Clean Air Act, which directs the ARB to adopt
2 measures to secure healthy air for Californians, and I quote,
3 "as expeditiously as practicable."

4 During this period, the Board, under Chairwoman
5 Schafer's able leadership, has, among other things: reviewed
6 their low emission vehicle clean fuels program, which provides
7 for the introduction of low and zero emission vehicles to clean
8 our air and to help meet federal and state clean air
9 requirements; reviewed phase two of the reformulated gas
10 program, which provides specifications for the world's lowest
11 polluting blend of commercial gasoline in the world; adopted
12 measures to reduce emissions from off-highway recreational
13 vehicles; revised evaporative emission standards; approved the
14 South Coast Air Quality Management District's regional clean air
15 incentive market reclaim; and worked on California's efforts to
16 meet Clean Air Act requirements by developing the best possible
17 State Implementation Plan.

18 In closing, let me thank you for your legislative
19 leadership on clean air and the economy, and express my desire
20 and commitment to working with the Legislature to achieve our
21 shared goals.

22 I want to add that it's been a great privilege to
23 serve on the Air Resources Board with Jacqueline Schafer.
24 Chairwoman Schafer and I came on this Board together, have
25 greatly enjoyed working together, and have, in my view,
26 accomplished much to assist California in attaining and
27 maintaining its high environmental air quality standards.

28 Thank you.

1 CHAIRMAN LOCKYER: Thank you.

2 Are there questions? Senator Ayala.

3 SENATOR AYALA: I have to ask you the same question I
4 asked your boss.

5 Are you familiar with Mayor Richard Riordan's
6 proposal to replace pollution controls in the urban area of Los
7 Angeles, and get tougher up in the Riverside and San Bernardino
8 Counties, where we're the recipients of the dirty air that Los
9 Angeles and Orange Counties produce? Yet, he's pushing it over
10 to us for more restrictions.

11 I was really surprised that he wants to put controls
12 on dairy farms, and dust from farming and construction, when in
13 the Los Angeles area, the biggest pollution is from the
14 automobile. You know, given that the ARB's concerned with the
15 automobiles, and the district board is concerned with stationary
16 sources, are you familiar with the Mayor's proposal to shift the
17 curtailment of pollution in the other counties when they are the
18 producers?

19 We're downstream polluters, really, but the main
20 source comes from those two counties. Are you familiar with
21 that proposal?

22 MS. EDGERTON: Yes, I am familiar from the
23 standpoint that I know it's been made, and I know that the Air
24 Resources Board is participating in a task force with the South
25 Coast Air Quality Management District and the City of Los
26 Angeles to try to sort out that proposal.

27 I'm not prepared to speak to it today because I have
28 not had the opportunity to study it carefully.

1 SENATOR AYALA: You have no position on it at this
2 point?

3 MS. EDGERTON: No, I don't.

4 SENATOR AYALA: Thank you.

5 CHAIRMAN LOCKYER: Well, it sounds like something
6 worth finding out about.

7 MS. EDGERTON: It certainly does.

8 I live in Los Angeles, and the air quality of Los
9 Angeles is of paramount interest to me, and I'm aware that the
10 wind blows from the ocean and pushes the air pollution into the
11 east.

12 CHAIRMAN LOCKYER: We've noticed that in the
13 Legislature, too.

14 MS. EDGERTON: I've seen the mountains disappear in
15 the late afternoon.

16 CHAIRMAN LOCKYER: Are there other questions from
17 Members?

18 Why don't we just acknowledge for the record those
19 that have appeared in support. If you want to put your name in
20 the record, we can, but I have a feeling we're looking at a
21 unanimous vote here, unless you figure out a way to undo it.

22 MR. ROSS: I am Tommy Ross, Southern California
23 Edison.

24 We'd just like to say that we've found Ms. Edgerton's
25 professional, educational and academic background, including her
26 experience at Cal-Start, and we believe she's imminently
27 qualified to continue her work on the Air Resources Board, and
28 would continue to urge you to approve her nomination.

1 CHAIRMAN LOCKYER: That was longer than necessary.

2 [Laughter.]

3 MS. JONES: I'm Victoria Jones with Southern
4 California Gas Company.

5 We, too, are here to speak in support of Lynne
6 Edgerton for a member of the California Air Resources Board and
7 would urge you to confirm her appointment.

8 CHAIRMAN LOCKYER: Thank you.

9 MS. MARTIN: I'm Cecile Martin of the California
10 Electric Transportation Coalition, and I'm here representing the
11 state's major utilities, both gas and electric and gas
12 utilities.

13 We're here to support the confirmation of Lynne
14 Edgerton. We've found her to be a very active member of the Air
15 Resources Board, and we find her perspective very valuable.

16 Thank you.

17 CHAIRMAN LOCKYER: Thank you.

18 MR. HOSSEPIAN: My name is Gorik Hossepien with
19 Allied Signal Aerospace.

20 I think you heard testimony earlier today in support
21 of Jackie Schafer. I won't go through my comments. I'd just
22 like to say that we in full support of Lynne Edgerton's
23 nomination and confirmation for the seat, and we think she can
24 bring a great vision and leadership to the Board.

25 Thank you.

26 CHAIRMAN LOCKYER: Thank you.

27 Is there anyone who wishes to comment in opposition?

28 I'll note that the file reflects no opposition
letters or comments.

1 SENATOR BEVERLY: We haven't found out about the Iron
2 City Fishing Club. Does that have anything to do with
3 Pittsburg?

4 MS. EDGERTON: It does.

5 CHAIRMAN LOCKYER: Do they have any fish that are
6 alive there?

7 MS. EDGERTON: Actually, it's in Canada, and it's a
8 place I've gone ever since I was a little girl, and I believe
9 it's one of the things that made me an environmentalist, fishing
10 in the pristine wilderness every summer for small mouth and
11 large mouth bass.

12 CHAIRMAN LOCKYER: Does that mean there are folks
13 from Pittsburg that wander up there?

14 MS. EDGERTON: My grandparents did.

15 SENATOR CRAVEN: Knowing where this lady comes from,
16 which is Tennessee, I thought may there was an outside chance
17 that it was in Bessamer, which is, of course, next door to
18 Birmingham where they have a lot of steel.

19 MS. EDGERTON: I'm hoping to get some fishing in here
20 in California.

21 CHAIRMAN LOCKYER: You should have spent some time in
22 Philadelphia. I could tell that was a gap in your --

23 SENATOR CRAVEN: We lost all our factors. They all
24 moved to the south.

25 CHAIRMAN LOCKYER: What's the pleasure of the
26 Committee?

27 SENATOR CRAVEN: Move.

28 CHAIRMAN LOCKYER: We have a motion by Senator

1 Craven. Call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye. Senator Beverly.

5 SENATOR BEVERLY: Aye.

6 SECRETARY WEBB: Beverly Aye. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye. Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Craven Aye. Senator Lockyer.

11 CHAIRMAN LOCKYER: Aye.

12 SECRETARY WEBB: Five to zero.

13 CHAIRMAN LOCKYER: Good luck. Do a good job.

14 MS. EDGERTON: Thank you.

15 CHAIRMAN LOCKYER: Mr. Flournoy, now is the time. If
16 there's anyone that wishes to comment, either for or against,
17 come up to the front.

18 Good afternoon, sir.

19 MR. FLOURNOY: Good afternoon.

20 CHAIRMAN LOCKYER: Thank you for your patience in
21 waiting.

22 Do you want to comment generally, you've served on
23 the Board now for several years, right?

24 MR. FLOURNOY: I've been on the Board for seven
25 years. I'm an engineer by training and experience.

26 During those seven years, I have been the only
27 technical member on the Board; still am.

28 I think I've done a good job. I didn't write out any

1 speech for this. I'll let you gentlemen ask me questions.

2 CHAIRMAN LOCKYER: That'll be fine.

3 Senator Ayala, do you have a question?

4 SENATOR AYALA: I was looking at your background.
5 You are a retired engineering consultant?

6 MR. FLOURNOY: Actually, I'm just retired now. My
7 last consulting job, that last dollars that I earned, was in
8 1986, 40 years after the first one of 1946.

9 SENATOR AYALA: Doing what?

10 MR. FLOURNOY: What am I doing now?

11 SENATOR AYALA: You earned them doing what? I'm
12 trying to find out what your background is.

13 MR. FLOURNOY: My background is engineering
14 construction. I started out as a design engineer with Stone and
15 Winter Engineering Corporation in Boston, designing
16 power plants. I ended up as Vice President of Occidental
17 Petroleum Corporation in charge of engineering and construction
18 for Occidental.

19 And in the meantime, I built plants and projects over
20 a good many of the countries in the world.

21 SENATOR AYALA: The reason I ask is because your
22 category that you serve is one that shall have special
23 competence in areas related to water quality problems. I was
24 just wondering how your background related to that kind of --

25 MR. FLOURNOY: I'm not a sanitary engineer by
26 training. In other words, I would not take it upon myself to
27 design a sewage treatment plant, but in most of the projects we
28 had, one that comes to mind is a crude oil terminal we did in

1 the Orkney Islands for the -- north in the U.K. This had,
2 obviously, oil and water separators, problems on the sanitary
3 disposal.

4 Most of the projects we've had had sanitary disposal
5 problems with them, because there were things like -- and also
6 chemical. We had 1650-mile ammonia pipeline that we ran through
7 Russia. I mean, there were all sorts of problems with this,
8 because ammonia's toxic, so as a part of my experience going for
9 many of these years, we always had to be sensitive to these
10 things.

11 And although I'm not an expert water chemist, I know
12 how to deal with these matters because that's the way I earned
13 my living.

14 SENATOR AYALA: What do you see as the major water
15 quality issue facing California today?

16 MR. FLOURNOY: I think probably it's a mixture of
17 water quality and water quantity. And this is what's going to
18 be done in the San Francisco Bay/Delta with the requirements for
19 the fisheries, with the requirements for agriculture, with the
20 requirements for -- and the fishery primarily, because we got
21 involved in water quality with the temperature of water, for
22 instance. Well, the temperature of water is related to the
23 amount of water that is flowing. So, the quality and the
24 quantity become intermixed.

25 In agriculture, aside from the fact that the cost of
26 water is a very important thing, the runoff of pesticides from
27 the under drains in the farming areas is a problem. And to
28 compound it even further, I think, we have the federal U.S. EPA,

1 which so far anyway, has not particularly liked the solution
2 that the California Water Resources Board has come up with, so
3 we have this kind of a controversy, or negotiation, or whatever
4 it is. And these are very serious matters in a state where
5 agriculture is our biggest industry.

6 So, I think that's a real serious problem, and I
7 think it's going to become more so because I doubt that we're
8 going to see many new water resources in this state. We're just
9 going to have to use what we have.

10 SENATOR AYALA: Do you agree that we can't seriously
11 think about water problems in California without addressing the
12 Delta first?

13 MR. FLOURNOY: I think the Delta is the key to it,
14 because the Delta means the Sacramento River, the Trinity, all
15 of these Northern California rivers.

16 SENATOR AYALA: That's the key.

17 MR. FLOURNOY: To me it's the key, and I am not
18 personally involved in it because my region does not include the
19 Delta. But from the point of view of the state, I think it's
20 key to solving water in California.

21 SENATOR AYALA: Thank you.

22 CHAIRMAN LOCKYER: Yes, Senator Craven.

23 SENATOR CRAVEN: I'm kind of moving away from the
24 subject matter, but I'm somewhat interested.

25 This gentleman went to two of the great schools in
26 this country.

27 CHAIRMAN LOCKYER: Elementary school and junior high?

28 SENATOR CRAVEN: No, no. He went to Andover. And

1 I've known of Andover for a long time, but I never knew that
2 they gave an M.A. degree, which is on this thing here, nor have
3 I ever heard of Johns Hopkins giving a B.E. Now, that probably
4 stands for Bachelor in Engineering.

5 MR. FLOURNOY: It does.

6 SENATOR CRAVEN: And the other one, God only knows
7 what that means. What does M.A. mean at Andover?

8 MR. FLOURNOY: M.A. is not a degree. That's the
9 abbreviation for Massachusetts, because there are people who
10 wouldn't know where Andover was.

11 SENATOR CRAVEN: I don't know who does this, Nancy,
12 but they're pretty tricky. The last time Johns Hopkins
13 appeared, it was John Hopkins. They change the name of the
14 school and everything.

15 MR. FLOURNOY: It should have an "s" on it.

16 SENATOR PETRIS: M period A period is not the
17 abbreviation for Massachusetts.

18 MR. FLOURNOY: There's no degree from Andover prep
19 school, boarding school.

20 MS. MICHEL: You're absolutely right.

21 SENATOR CRAVEN: It's Andover Academy, but it's
22 Phillips Andover, because that's the family that underwrote
23 those two schools years ago.

24 Is it Merrimack or Andover?

25 MR. FLOURNOY: Andover.

26 SENATOR CRAVEN: But it's close; isn't it?

27 MR. FLOURNOY: Merrimack is close, yes. It's just
28 north of Boston, 30 miles, something like that. Then you go a

1 little further north to Exeter in New Hampshire.

2 SENATOR CRAVEN: I said two schools, that's the other
3 one, all of which is of great interest to these fellows who went
4 to the University of California, and Stanford, and whatever.

5 CHAIRMAN LOCKYER: Well, I guess I'm going to ask you
6 to comment on Supervisor Carpenter's comment that is critical or
7 negative. Are you aware of his --

8 MR. FLOURNOY: No, I'm not. I obviously know who
9 Supervisor Carpenter is.

10 CHAIRMAN LOCKYER: It's his suggestion that you're an
11 outspoken member of the group within the Sonoma County Alliance
12 that's very critical of government regulatory activities, and
13 specifically environmental regulations.

14 Do you think that's a fair assessment?

15 MR. FLOURNOY: No, I don't think so, no.

16 The Sonoma County Alliance is a group which is
17 business oriented, but as far as being critical of regulations,
18 California regulations, my experience with them has been that
19 it's not critical of regulations. It's critical of over
20 regulating in some instances where they think it occurs.

21 CHAIRMAN LOCKYER: Is there an example that comes to
22 mind for you of where there was some activity or proposal that
23 you would deem, or the Alliance and you, would deem over
24 regulation that maybe Supervisor Carpenter would have supported?
25 Is there anything at all that comes to mind so I could try to
26 understand the dispute?

27 MR. FLOURNOY: It doesn't really.

28 Supervisor Carpenter has a very strong backing in the

1 west county in Sonoma County. And there's a very strong
2 antipathy toward the City of Santa Rosa. The City of Santa Rosa
3 is the operator for a regional sewage plant. And the effluent
4 from that sewage plant is not used to irrigate the land, the
5 majority of it is, but the excess goes into the Russian River.
6 And Supervisor Carpenter's constituency are people who live
7 along the Russian River and -- not near the river, but in the
8 west county.

9 And the meetings that we have usually have a
10 contingent of people, from varying sides, of course, but usually
11 the same faces, from that part of the county who are objecting
12 to the activities of the City of Santa Rosa.

13 Our Board, quite obviously, is interested in what is
14 good for the water quality. The evidence that we have been able
15 to ascertain is that the effluent from the sewage treatment
16 plant is cleaner than the water flowing down the river upstream
17 of the point where the effluent enters it. And this is probably
18 beyond dispute. This has been the result of much testing.

19 But this does not change the feelings, the very vocal
20 feelings, of Supervisor Carpenter's constituents. So, there's a
21 lot of four-letter words that get involved in this, as you can
22 well imagine. So some of these hearings remind me of the scene
23 I encountered coming into the Capitol Building this afternoon.
24 Some guy had a bull horn, yelling at the top of his voice.
25 We've had some of those situations in trying to conduct water
26 quality control hearings.

27 So, I mean, there are emotions that completely
28 obscure that I would call scientific aspects of water quality.

1 And they involve growth, and no growth, and all this sort of
2 business.

3 You're well aware of them, you gentlemen, I'm sure,
4 because you must encounter them more than I do.

5 CHAIRMAN LOCKYER: There seems to be some comments
6 from the Russian River Alliance regarding signs in the meeting
7 rooms, I guess?

8 MR. FLOURNOY: There was an incident. And again, I
9 was Chairman of our Board at that time. I was trying to conduct
10 a hearing. We had about 200 people in a room designed for about
11 a hundred people, with placards and signs, and stamping of feet,
12 and all the things that go with it, a demonstration, in other
13 words. We had the State Police there; our executive officer had
14 brought them in.

15 I told the people that we were not going to be able
16 to conduct the hearing unless we got rid of the signs. If they
17 wanted to demonstrate and chant and wave their signs, they were
18 perfectly welcome to go outside the meeting room, but that we
19 couldn't conduct the hearing under those circumstances.

20 And they eventually did. We did conduct the hearing.
21 Interestingly enough, we -- this was two years ago, we haven't
22 had a repeat of the situation since, not with me as chairman,
23 because I ceased to be chairman probably two or three meetings
24 after that.

25 But I think in the final analysis, it was beneficial,
26 because it's easier to conduct business in an atmosphere like
27 the one in this room, quite obviously, rather than the
28 atmosphere out in front of the Capitol Building.

1 CHAIRMAN LOCKYER: I don't go out there.

2 MR. FLOURNOY: I don't blame you. But you wouldn't
3 want it in your hearing room here, I'm sure.

4 CHAIRMAN LOCKYER: You're right about that.

5 Are there questions from Members? Senator Ayala.

6 SENATOR AYALA: You're seeking the appointment of
7 District One, North Coast?

8 MR. FLOURNOY: Yes, sir.

9 SENATOR AYALA: How far south does that district go?

10 MR. FLOURNOY: It goes down to the Esterro Americano,
11 which is just a hair of it is in the northern part of Marin
12 County, but it's basically the part of Sonoma County which
13 drains into the Pacific rather than draining into San Pablo Bay.
14 Then it goes on up to Humboldt and Mendocino and --

15 SENATOR AYALA: Does that include Santa Rosa, the
16 City of Santa Rosa?

17 MR. FLOURNOY: Yes, it does, sir.

18 It goes east to about Kenwood. And Kenwood, although
19 it looks very flat, east of Kenwood it starts draining into San
20 Pablo Bay through Sonoma.

21 SENATOR AYALA: Thank you.

22 CHAIRMAN LOCKYER: Now, your slot on the Board is
23 water quality.

24 MR. FLOURNOY: Water quality.

25 CHAIRMAN LOCKYER: Is that appropriate?

26 MR. FLOURNOY: Yes, I think it is.

27 CHAIRMAN LOCKYER: Have you done work in the water
28 quality area as an engineer, or something?

1 MR. FLOURNOY: Yes, although I'm not a sewage
2 treatment engineer. I'm not a sanitary engineer by training.

3 CHAIRMAN LOCKYER: But still, you would be familiar
4 with water quality issues?

5 MR. FLOURNOY: Yes, sir.

6 When you get into engineering the way I did after 40
7 years and end up managing companies, you've been involved in
8 highways, and process plants, and power plants, sewage treatment
9 plants. You can't help it.

10 CHAIRMAN LOCKYER: You learn a little bit about all
11 of this kind of thing.

12 MR. FLOURNOY: What you learn to do is how to ask
13 questions, and then judge from the answers you're getting
14 whether they make sense or not.

15 CHAIRMAN LOCKYER: Is there any question we haven't
16 asked you that we should?

17 MR. FLOURNOY: Not that I'm aware of, but go ahead.
18 I'll try and defend myself.

19 CHAIRMAN LOCKYER: That's all right.

20 Let me inquire if there's anyone present who wishes
21 to comment, either for or against the nomination?

22 Senator Craven probably wishes to renew his motion.

23 SENATOR CRAVEN: Yes, I do.

24 CHAIRMAN LOCKYER: Which is to recommend
25 confirmation. Call the roll, please.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye. Senator Petris.

3 SENATOR PETRIS: No.

4 SECRETARY WEBB: Petris No. Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Craven Aye. Senator Lockyer.

7 CHAIRMAN LOCKYER: No.

8 SECRETARY WEBB: Three to two.

9 CHAIRMAN LOCKYER: That one is adopted three to two,
10 sir. Good luck and congratulations.

11 MR. FLOURNOY: Thank you, sir. Thank you all.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 5:12 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of September, 1994.


EVELYN J. MIZAK
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOANNE C. KOZBERG, Secretary
State and Consumer Services Agency

SENATOR HENRY MELLO

DEAN R. DUNPHY, Secretary
Business, Transportation and Housing Agency

SENATOR QUENTIN KOPP

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We have Senator Mello present, so perhaps, if it's okay with the Committee, we'll start with my Majority Leader.

SENATOR MELLO: Thank you very much, Mr. Chairman and Members.

I'm here on behalf of a good friend and a fine person that I've come to know and respect a lot, and she's up for confirmation today for the Secretary of State and Consumer Affairs.

I was aware about two weeks ago that her confirmation was pending before the Rules Committee, and I was advised that she was not sleeping well, and not eating well, and kind of nervous about it. That's to be expected because people wait with some apprehension about coming before this very distinguished Rules Committee.

So, I felt I would write a letter, which I did, and I'd come here personally to just introduce her.

We became acquainted when she was on the California Art Council Board of Directors, and she did a tremendous job there. Later, she became the Director of the California Art Council and served at that position until the Governor selected her to be the Secretary of State and Consumer Affairs.

During that period of time, as you know, many of our colleagues, in fact, don't believe in arts or the Art Council, and there were many runs made at the budget and at the programs themselves, especially from the other house. I saw the great

1 commitment that Joanne Kozberg has and her understanding of the
2 issues, and her willingness to really fight for what she
3 believes in, and also work closely with both the Legislature and
4 the Governor's Office.

5 So, I just have a tremendous respect for her. So, I
6 wanted to come here and say these brief words and urge the Rules
7 Committee to confirm her because I think she's an excellent
8 choice to head this very important agency in the state.

9 Thank you for letting me appear. I know Joanne will
10 do a great job once she's confirmed.

11 CHAIRMAN LOCKYER: Thank you, Senator. It's always a
12 pleasure to have you with us.

13 It looks like you maybe have a statement to open
14 with.

15 MS. KOZBERG: I would like to.

16 Mr. Chairman and Members, since December of last
17 year, I served the people of California as Secretary of State
18 and Consumer Services. Between the Northridge earthquake and
19 the state's continuing budget shortfalls, my agency, like the
20 rest of state government, has been asked to be innovative,
21 resourceful, and above all, make government work harder and
22 smarter.

23 Barely six weeks after I was sworn in, the Northridge
24 earthquake ushered in my first opportunity to make a difference.
25 The temblor hit Southern California and knocked out schools for
26 thousands of children, and school districts from Simi Valley to
27 Santa Monica were forced to cope with damaged classrooms and
28 closed schools.

1 The Office of Local Assistance, part of the
2 Department of General Services, is charged with constructing and
3 leasing portable classrooms for school districts. Before the
4 Northridge earthquake, we filled the requests for portable
5 classrooms in about ten weeks. After the quake, we developed a
6 radically streamlined process and got the first portables to the
7 schools in just ten days.

8 We made it clear that we would meet with anyone,
9 anywhere, at any time if it meant that the children and teachers
10 got the classrooms they needed without red tape and in record
11 time. With the help of a lot of dedicated employees, working
12 nights and weekends, we succeeded.

13 The earthquake also meant that we had to mobilize the
14 Department of Consumer Affairs and the Contractors State License
15 Board to get timely and accurate information out to consumers
16 faced with the monumental task of rebuilding their homes and
17 businesses. Over cable television and at community forums
18 throughout Southern California, we were able to quickly get the
19 people the information they needed on how to access government,
20 and to get educated about their rights.

21 Reaching out to the consumer did not begin nor end
22 with the Northridge quake. We have been working closely with
23 professional boards within the Department of Consumer Affairs to
24 continually educate them about their responsibility to protect
25 consumers and police their industries. That is why we support
26 Senator McCorquodale's sunset bill, SB 2036, which would create
27 a process for jointly reviewing the effectiveness of consumer
28 boards and reauthorizing only the ones that justify their

1 existence.

2 I have chaired hearings around California, as called
3 for by Senator Craven, to lay the groundwork for a program to
4 protect consumers and to establish professional standards for
5 the auto body industry. On behalf of Californians, I've also
6 lobbied the Congress and the U.S. Department of Agriculture
7 concerning anti-consumer practices by the federal government
8 which allow poultry products to be sold in California as fresh,
9 even though they've been previously frozen.

10 I believe strongly in the power of government to do
11 good. But I also believe strongly, as I have since my days as a
12 CORO fellow and then its executive director, that government can
13 only do good work by being inclusive, by proactively reaching
14 out to people, to diverse constituencies, and by leveraging
15 public and private resources to create mass and depth.

16 I believe in teamwork. One result of that teamwork
17 is the report issued in April by the Division of the State
18 Architect, addressing the need for seismic safety improvements
19 to state buildings. In December, soon after I was appointed, we
20 developed an interagency team to speed the completion of the
21 seismic safety surveys by the State Architect's Office, and
22 provide a comprehensive spending plan for repair of those
23 buildings.

24 We completed the report in just four months, and with
25 the help of Senator Torres and his staff, folded the spending
26 recommendations into Senate Bill 747, currently awaiting action
27 in Assembly Ways and Means.

28 I am currently working to implement Executive Order

1 W-93-94, creating the California Information Technology Council.
2 This council, bipartisan in nature, is designed to get input
3 from experts in the private and public sector to improve the
4 state's use of information technology, make government
5 information more accessible, and educate our children.

6 That sense of reaching out also describes the efforts
7 of our asset management program. Working with cities and
8 redevelopment agencies in Oakland, San Francisco, Los Angeles,
9 and San Bernardino and Riverside, we've been able to develop
10 plans for new office buildings which create jobs, eliminate
11 costly and multiple leases, and make the state government more
12 accessible, while at the same time, saving scarce tax resources.
13 These facilities have met with great community acceptance. In
14 Los Angeles, our plans to revitalize the historic downtown core
15 have won major local and national awards.

16 The State and Consumer Services Agency has a vast
17 menu of issues. I intend to do my best to make sure that I
18 respond, and that the people who report to me respond in an
19 open, inclusive, effective manner to you, the Legislature, and
20 to the people of California.

21 Thank you.

22 CHAIRMAN LOCKYER: Thank you very much.

23 Is there anyone in the audience, first of all, that
24 would wish to comment, either for or against the nomination?
25 Seeing none other than Senator Mello, let me ask if there are
26 Members that have any questions? I have numerous, but we'll get
27 to those.

28 Senator Petris.

1 SENATOR PETRIS: I'm going to ask a few questions
2 about historic preservation policies. I've been active in that
3 for years and am concerned about some issues that have arisen in
4 the last couple of years.

5 One of them is the California Museum of Science and
6 Industry. You've probably heard more about that than you care
7 to at this point, and there is a dispute going on, and there are
8 some Members who differ with each other within the Senate.

9 What I'm concerned about is that it's pretty clear
10 from the record, as indicated by Senator Boatwright in his
11 budget hearings and also by Senator Alquist as Chairman of the
12 overall Budget Committee, in addition to what I've been doing,
13 that the decision made some way or other to demolish a couple of
14 buildings, both of which are considered valuable historic
15 buildings -- one is the museum building itself, the other is the
16 Ahmanson building; there are a couple of them -- without going
17 through the proper process. That's what troubles me.

18 We have two separate agencies created by statute to
19 review matters of that kind. One is the Historic -- I keep
20 forgetting the titles, but I think you know -- the State
21 Historic Preservation Board is one which has a staff, an
22 officer, that's supposed to be monitoring things of this sort,
23 and make recommendations, and review all requests for demolition
24 or even alteration of a building that's been declared to be a
25 historic one. That's the key one, and the other one I'll come
26 up with shortly.

27 They were never consulted, or rather, petitioned is
28 the more proper word, to review the proposal with respect to the

1 Museum. And even after complaints were made from within the
2 Legislature that that policy ought to be followed, it simply
3 wasn't. They just went full bore ahead.

4 I think now we're still in the process of soliciting
5 bids for the demolition of those buildings; is that correct?

6 MS. KOZBERG: Senator, I may be the one person that
7 is not knowledgeable about the Museum of Science and Industry.

8 As you may be aware, and I hope I have made everyone
9 aware, that Roger Kozberg, my husband, was appointed by the
10 Governor in September, 1991, to the Board of the Museum of
11 Science and Industry.

12 When I took this job, I went to the attorney, of
13 course, before taking the job, to see if there was any potential
14 conflict. There is no conflict of interest because conflict of
15 interest is an economic interest law and he is a volunteer.
16 However, because of perception, I have recused myself from
17 dealing with the Museum of Science and Industry, as well as the
18 Coliseum. I have delegated the Museum of Science and Industry
19 to the Undersecretary, and the Coliseum issues are being handled
20 by the Secretary of Resources.

21 SENATOR PETRIS: I'm aware of that, but it's still
22 the ultimate responsibility of your office to see that the law
23 is followed. And regardless of who is appointed to take over
24 for you, the law just hasn't been followed, and ultimately that
25 bounces back on you.

26 I suppose it's better to avoid the perception of a
27 conflict than to insist that you stay in it and maybe have a
28 marital conflict because your husband may want to go in one

1 direction and you --

2 MS. KOZBERG: That happens often in our family.

3 SENATOR PETRIS: -- and you may want to go in another
4 direction. I don't know what his position has been in this
5 conflict with regard to hanging on to that Museum and preserving
6 it, or at least going through the proper committees -- not
7 committees, but agencies of the state.

8 In addition to that, the Governor himself issued an
9 Executive Order calling on every state agency to have as a high
10 priority the notion of being aware and sensitive to the history
11 of a particular building and safeguarding it. It appears that
12 that order was also violated by the people who ran
13 helter-skelter into the notion of knocking these buildings down.

14 Now, I don't know where they are at the present time,
15 and I guess you're not on top of it.

16 MS. KOZBERG: I can make sure that the correct people
17 come to see you.

18 SENATOR PETRIS: Well, I've talked to some. I had a
19 long meeting, a couple hours, with the deputy that you
20 mentioned. She came to the office with one or two others in a
21 good faith effort to try to iron this out, but it hasn't been
22 ironed out.

23 MS. KOZBERG: If you have concerns about my
24 commitment to historic preservation, as a former Director of the
25 California Arts Council, I do want you to know that I feel that
26 architecture is part of our cultural heritage, and intend to do
27 as I have done in the past, everything to maintain the
28 historical preservation component in whatever we do.

1 SENATOR PETRIS: Well, it may mean you'll have to
2 unrecuse yourself to step and see that the agency does what it's
3 supposed to do.

4 We have a State Historic Preservation Office, and we
5 have a State Historic Building Safety Board, which includes
6 seismic problems and others, neither one of which was petitioned
7 by who ever made the decision under your roof, maybe way down
8 below your roof. It might have been several floors, for all I
9 know. But the problem is, you're the one ultimately running the
10 show, and to this date they haven't done that.

11 They've had a lot of talks, phone calls, and some
12 talks. But as far as I know, to this date they have not
13 formally requested permission to proceed with this demolition.

14 So, if you could look into it to that extent for the
15 purpose of coming down on the side of preservation and obeying
16 the statute, that would be very helpful, and I would appreciate
17 some feedback from you on that.

18 MS. KOZBERG: I shall certainly do so.

19 SENATOR PETRIS: The other thing is the State
20 Architect made a very serious violation in completely ignoring
21 the statute with respect to bidding requirements for minorities,
22 and women, and veterans, and the disabled, and went direct to
23 somebody who happened to be a close, personal friend over a
24 period of years. He may be well qualified, but it just doesn't
25 look good when you bypass all the normal bidding procedures and
26 pick an old friend.

27 That should have been challenged, of course, by
28 somebody in your shop early on.

1 Now, the last question has to do with --

2 CHAIRMAN LOCKYER: If I may interrupt on that point.

3 SENATOR PETRIS: Yes.

4 CHAIRMAN LOCKYER: When the department or agency
5 fails to enforce the law with respect to the State Architect's
6 lack of judgment, or maybe worse, it causes enormous problems
7 for us. It's very hard every year to pull together the budget
8 votes, the two-thirds votes, and issues like that were so
9 provocative with five Members of the Senate that it created
10 enormous controversy: with Boatwright and Kopp being
11 particularly exercised about the improprieties; Senator Petris
12 concerned about the historic preservation issues; Watson and
13 Hughes concerned about the site and their district issues. It
14 was a mess.

15 And a lot of it, frankly, was the result of out-of-
16 control administrators, or what appeared, that inflamed the
17 whole problem. And more than maybe any other single issue, it
18 was the one that made the budget difficult for us this year.

19 Pardon me, Senator.

20 If we could take a five-minute break, we can all get
21 on the roll so they're able to substitute the roll without us.

22 Stay just where you are, or do whatever you want, but
23 we'll be back in five minutes.

24 [Thereupon a brief recess was taken.]

25 CHAIRMAN LOCKYER: There's a number of areas I'd be
26 interested in hearing your response to, but to be fair, I want
27 to tell you kind of where I'm headed.

28 Your nomination probably raises for me the clearest

1 example of wonderful person, terrible policies. And I don't
2 know how to balance that.

3 Now that Senator Petris is back, however, I don't
4 want to interrupt you.

5 SENATOR PETRIS: I need to catch my breath first.

6 CHAIRMAN LOCKYER: All right, you catch yours.

7 Let's just go down the list. For me, they are Office
8 of Insurance Advisor, Fair Employment and Housing, General
9 Service, Personnel Board, you've heard this issue, and then just
10 sort of the Balkanization of that place, and all the boards and
11 commissions that seem to be often kind of off of their own and
12 out of control. And I guess I would add in that category the
13 lemon law as one specific consumer issue.

14 Anyhow, the Office of Insurance Advisor is, I guess,
15 technically under you.

16 MS. KOZBERG: It reports directly to the Governor.
17 It's housed within the Agency, but it is the advisor directly to
18 the Governor.

19 CHAIRMAN LOCKYER: What does that mean? That you
20 don't really have any supervisory role?

21 MS. KOZBERG: Again, my husband is an insurance
22 broker, and I have a letter of recusal in that I do not handle
23 the insurance issues.

24 CHAIRMAN LOCKYER: But that persons does.

25 MS. KOZBERG: But that person does, and again, Anne
26 Sheehan, the Undersecretary, handles all insurance-related
27 issues.

28 CHAIRMAN LOCKYER: Who's the Undersecretary?

1 MS. KOZBERG: Anne Sheehan.

2 CHAIRMAN LOCKYER: But that's one of your deputies.

3 MS. KOZBERG: Yes, she is the Undersecretary --

4 CHAIRMAN LOCKYER: She works for you.

5 MS. KOZBERG: Yes, that's correct.

6 CHAIRMAN LOCKYER: I guess I don't quite understand
7 what would happen.

8 If an insurance issue comes up, and there's a lot of
9 them these days in health insurance, and HMOs versus docs, and
10 different kinds of insurance, and auto, and earthquake. I mean,
11 the list goes on and on.

12 You basically don't get involved in those debates?
13 Is that what you're saying?

14 MS. KOZBERG: No, and the Insurance Advisor works
15 directly with the Governor's Office on a number of these issues.
16 As we're all aware, the industry is regulated through the
17 Department of Insurance.

18 CHAIRMAN LOCKYER: Right, but in terms of having
19 policy --

20 MS. KOZBERG: I have no policy input.

21 CHAIRMAN LOCKYER: But your Undersecretary, then,
22 does or doesn't?

23 MS. KOZBERG: Basically signs off, but that Insurance
24 Advisor really responds directly to the Governor's Office.

25 CHAIRMAN LOCKYER: But you have some role with the
26 Undersecretary, I guess. No? What does the Undersecretary do?

27 MS. KOZBERG: It's really basically a sign-off and
28 pass-through to the Governor's Office to get the information

1 delivered.

2 CHAIRMAN LOCKYER: So, if they want, like, a position
3 on a bill, or something, is that where this would come up?

4 MS. KOZBERG: Yes, but it is wholly -- they do their
5 own analysis. It is not in our Agency. We do not do the
6 analysis.

7 CHAIRMAN LOCKYER: One of the things we found in this
8 budget cycle is that apparently there are a number of exempt
9 positions scattered around through numerous agencies that are,
10 in effect, the Governor's staff. This appears to have been
11 something devised by Colby Olson, or whomever. I don't know
12 where it started. It seems to be happening currently quite a
13 bit, where governors are afraid to be criticized for an
14 expansion of their staff. So, they way they do it is, they seed
15 them all around, but they really work for the Governor and often
16 are located in his suite.

17 That sounds sort of like the Insurance Adviser's
18 role. I don't mean my political take on it, but that sounds
19 like one of those kinds of things. I'll just say it; you don't
20 have to respond.

21 Fair Employment and Housing, there have been disputes
22 in recent years about appropriate remedies that are brought in
23 an administrative forum. Many of us were disappointed that the
24 Department seemed to fall more on the side of a business
25 perspective rather than championing the concerns of the
26 individual who would be bringing a discrimination complaint.

27 Has that debate occurred at all during your tenure?

28 MS. KOZBERG: We have done an entire overhaul of that

1 Department: going to an 800 number; making sure that people are
2 promptly responded to. And it's something that I'm particularly
3 interested in, as I worked for the NAACP Legal Defense Fund, and
4 I think that it really helped sensitize me and gave me a
5 familiarity with issues that would come under that department.

6 CHAIRMAN LOCKYER: When did you do that?

7 MS. KOZBERG: In 1976.

8 CHAIRMAN LOCKYER: What were you doing?

9 MS. KOZBERG: I was coordinating cases in Southern
10 California and also helping with the fundraising.

11 CHAIRMAN LOCKYER: Well, the remedy issue, though, I
12 mean, you've done, apparently, the structural reform. There may
13 be a substantive issue about what remedies are available to
14 people that probably predates you. I think this is a year or
15 two ago that we were in the midst of all of these disputes.

16 But it was very disappointing to have the Commission,
17 the Department, the Secretary all urging us to scale down the
18 remedies that were available to injured parties.

19 MS. KOZBERG: I will look into that immediately.

20 CHAIRMAN LOCKYER: That hasn't, I guess, come up
21 during your time.

22 MS. KOZBERG: No, it has not, but I will look into
23 it.

24 CHAIRMAN LOCKYER: In FEH, they're very aware of that
25 whole thing.

26 Similar question: there have been affirmative action
27 guidelines adopted by the Office of Compliance -- that's
28 probably not the exactly right title, but that's their job --

1 where they have to issue regulations with respect to state
2 contractors and state employee workforce, working with Personnel
3 Board and others.

4 It's my understanding that there has fairly recently
5 been a shift in the goals from trying to have, let's say, the
6 state workforce achieve ethnic and gender diversity that
7 reflects the labor force rather than the general population.

8 It makes a big difference, obviously, especially in
9 Hispanic employment, because Hispanics are the most under-
10 represented group in state service.

11 I think this is not a law. It's just an
12 administrative decision that was made. I ask if it's familiar
13 to you, or if you have any thoughts or ideas about the matter,
14 that the guidelines were changed from the original goal of
15 achieving employment levels that reflect the general population,
16 and instead were changed to the labor force, which of course
17 makes it much more Caucasian.

18 Does that ring a bell at all?

19 MS. KOZBERG: Not that specific issue, but I know
20 right now the State Personnel Board is going through an analysis
21 of the workforce. They've completed that, and you're absolutely
22 correct, there is a deficiency in the Latino representation in
23 state government.

24 I'm aware that they are awaiting and will be voting
25 on a report in the fall. I will get specifically involved in
26 that.

27 CHAIRMAN LOCKYER: You might ask the question as to
28 what the target is. And I think the law permits either, it just

1 depends on how committed people want to be to those goals.

2 One of the current debates in the Legislature, and I
3 think it will ripen, it sounds like it's going to ripen into an
4 initiative maybe next year, is a Constitutional amendment
5 offered up by Assemblymember Richter, Senator Kopp, Senator
6 Campbell -- and I don't know if there were others. I know those
7 three were involved -- which essentially prohibits state
8 affirmative action efforts based on gender, race, ethnicity.
9 That's what it does, basically.

10 I think the measure has died in the Legislature. I
11 believe it's going on now to the initiative situation.

12 Do you have any views about that? Did your Agency or
13 departments ever express opinions about the matter, or take
14 positions on the issue?

15 MS. KOZBERG: I'm not aware that we have taken a
16 position on it.

17 Right now the law speaks very clearly, and we are
18 trying to do our best and exceed the goals.

19 CHAIRMAN LOCKYER: Well, this would stop you from
20 doing that, and it sounds like you may not embrace that
21 approach.

22 MS. KOZBERG: I think California's strength is its
23 diversity.

24 CHAIRMAN LOCKYER: Me, too.

25 General Services, shifting and going down my list.

26 Senator, if you want to resume, you can at any time.
27 Just pop in.

28 Let me mention first, we've had a discussion as to

1 the effort to rebuild the core area in downtown L.A. I'm
2 delighted by your commitment and enthusiasm about that
3 undertaking and strongly agree about the need and the energy to
4 which your Agency and department is bringing to that task.

5 General Services has been the subject of numerous
6 audit reports and criticisms over the years that suggest -- I'll
7 over-summarize this -- that it's just this sort of big
8 bureaucracy out of control.

9 I'd appreciate any reflections and thoughts you may
10 have about the situation.

11 MS. KOZBERG: There is a lot to General Services. As
12 you know, there are 25 different divisions. And a lot of the
13 functions that -- like our Agency, are dissimilar.

14 I am aware and am taking a very good look at
15 alignment. I think one of my strengths is being able to take
16 a look and see how systems work, how people are communicating.
17 And I can see a number of suggestions coming forward how we can
18 improve our service.

19 General Services has an extremely hard task, and it
20 is a control agency. I hope to add value to how it meets its
21 needs, because we are all clients of that agency. And having
22 been a director of a state agency, I'm aware of how to work with
23 General Services from the customer's side.

24 SENATOR AYALA: On that point, the State Auditor has
25 surfaced a number of problems, record keeping problems, with the
26 Department of General Services.

27 What are we doing about that in General Services?

28 MS. KOZBERG: Well, if I could be specific to the

1 procurement issue, we have what we call Procurement 2000, and we
2 are totally taking a look, and we're going to re-engineer how we
3 procure so that we can give stronger access to small business,
4 minority and women businesses, taking a look at how we are
5 integrating our uses with the military bases that are closing,
6 looking at electronic commerce.

7 We are -- we know it needs improvement, and we are
8 working on that.

9 SENATOR AYALA: You are paying attention to the
10 Auditor's report. We're just not ignoring it?

11 MS. KOZBERG: No, we are working on it right now.
12 And the procurement area in particular is going full thrust in
13 taking a look at its systems, and how it is or is not
14 functioning optimally.

15 SENATOR AYALA: Thank you, Mr. Chairman.

16 CHAIRMAN LOCKYER: Are the kiosks under General
17 Services?

18 MS. KOZBERG: No, those are under Health and Welfare.

19 CHAIRMAN LOCKYER: Aren't you lucky.

20 [Laughter.]

21 CHAIRMAN LOCKYER: General Services, you have all
22 this, and when you say "realignment", what do you mean? What's
23 being thought about?

24 MS. KOZBERG: Well, again, taking a look at -- we'll
25 use procurement as the example.

26 There is a general frustration. There's a
27 frustration on the part of the people who try and procure and
28 the small vendors. So what we're trying to do is get maximum

1 input from the entire community and have competitively gone out
2 and bid to bring a private sector consultant firm in to take a
3 look at how state government could operate better, so that we
4 really are taking a look.

5 I hope -- am I answering your question?

6 CHAIRMAN LOCKYER: Yes. Are you talking about --

7 MS. KOZBERG: Or real estate, for example, needs to
8 be, I think, thoroughly looked at and come into an alignment.
9 We are doing that now, but I think that there are more
10 efficiencies that we could be undertaking.

11 CHAIRMAN LOCKYER: So alignment in your mind means
12 making it more efficient?

13 MS. KOZBERG: Well, it's making it more
14 user-friendly, more efficient, more economical; a lot of
15 different issues.

16 CHAIRMAN LOCKYER: What's been the hardest -- you've
17 been there seven months now?

18 MS. KOZBERG: Eight months.

19 CHAIRMAN LOCKYER: What's been the hardest decision
20 so far?

21 MS. KOZBERG: The toughest issue that I think I've
22 dealt with because of the emotion that's involved is the pool
23 barrier issue.

24 CHAIRMAN LOCKYER: Building Standards, I guess,
25 adopted rules. I don't know how much actual ability you have to
26 influence their determinations.

27 Are they sort of off on their own sometimes?

28 MS. KOZBERG: If I could give you the chronology of

1 that issue, because that also brought up a number of other
2 issues, too, that I think are very serious issues for the state.

3 When I came into office, there had already been
4 passed emergency regulations that brought up an appendix item,
5 which is an optional item, into becoming a mandated program of
6 the state, and that we had to go with that particular regulation
7 for pool barriers.

8 And the issue is that it's not perimeter fencing.
9 This is fencing that you would have to have four-sided fencing,
10 and where the house is the fourth side, there would have to be
11 alarms on the doors and windows. That was brought forward by
12 Housing and Community Development. It passed in September.

13 I came into office in December. After the different
14 constituencies came and spoke to me, I first of all believe that
15 emergency regulations should be emergency regulations, and that
16 we should have the maximum amount of public input up-front on
17 all decisions that are made.

18 In this instance, we held two hearings in Northern
19 and Southern California. They were all-day hearings, and they
20 were extremely emotional hearings. So, that is a piece that was
21 the past.

22 There was a bill that was concurrently moving through
23 the Legislature, and on the day that the Building Standards
24 Commission took its vote, the barrier bill that was facing the
25 Legislature, which did have distinctions from our regulation,
26 passed out of Senate Appropriations. It later died on the Floor
27 of the Senate.

28 CHAIRMAN LOCKYER: Right.

1 MS. KOZBERG: What we have done since is brought all
2 interested parties together to sit around the table.

3 CHAIRMAN LOCKYER: Did you have a position on the
4 bill?

5 MS. KOZBERG: On the bill, we had an oppose position
6 on the bill.

7 CHAIRMAN LOCKYER: How about lemon law, while I think
8 of positions on bills? There's been, of course, a proposal to
9 strengthen it in a variety of ways.

10 It seems peculiar to me to have the agency most
11 uniquely responsible for representing consumer concerns to be
12 opposed to that.

13 MS. KOZBERG: I have seen the comment done by the
14 Department of Consumer Affairs, and yes, they do have an oppose
15 position.

16 I remain open. The session is not over. I do know
17 that there is a consensus that we can improve the lemon law, and
18 we remain open to doing that. We know it is an issue with the
19 public.

20 CHAIRMAN LOCKYER: Well, sort of the heart of the
21 dispute, but there are numerous ones, involves how aggravating
22 it is for a consumer to get something fixed or changed or
23 replaced. And when the dispute resolution programs in
24 California are basically ones run by the automobile companies,
25 it starts being unfair.

26 Most states now have shifted to department-run
27 programs, but now we have a department under you that's saying,
28 "We don't want to do it. We want the industry to continue to

1 run these programs," where things happen like people aren't even
2 notified that their arbitration is occurring. They aren't even
3 told, the consumer. They go there, and there's a conflict of
4 testimony. The consumer finds out about it, and they say,
5 "Well, I'd like a little more time to get my records that will
6 refute the other argument." They say, "No, too bad."

7 I mean, it's just horrible, the things that go on.
8 And to have the Department of Consumer Affairs being an
9 aggressive advocate against consumer is distressing.

10 MS. KOZBERG: I have put in a call to Harry Snider,
11 who is the West Coast head of Consumers Union.

12 As I said, I remain and the Agency remains very open.
13 We will sit down with anyone anytime. We realize that there is
14 room for improvement.

15 CHAIRMAN LOCKYER: So, you're open, but the
16 Department under you has a position. How does that occur? Do
17 they all do that, this whole Balkanized place?

18 MS. KOZBERG: In this particular instance, the
19 Director just came back from a vacation. I saw his position on
20 Monday.

21 I intend to sit down with the Director, and he will
22 be, hopefully, a member who sits around the table, too.

23 CHAIRMAN LOCKYER: Senator Petris, maybe I can shift
24 to you.

25 SENATOR PETRIS: What's the current status of the
26 budget of the State Historic Safety Board? I understand during
27 conference, it was totally eliminated. Then I heard there was
28 some effort to put it back, but I'm not up to date on that.

1 MS. KOZBERG: It was eliminated in conference;
2 \$831,000 were taken out of the State Architect's budget. There
3 is very little General Fund money in the State Architect's
4 budget.

5 The only two programs that we had were the Toxics
6 Program, which is a federally mandated program, and the State
7 Historic Building Safety Board person.

8 SENATOR PETRIS: Is he under the Architect?

9 MS. KOZBERG: He is under the State Architect.

10 SENATOR PETRIS: He's not under General Services?

11 MS. KOZBERG: Again, General Services is very large.
12 The State Architect is officed within General Services.

13 We immediately sat down and worked with the State
14 Historic Preservation officer. We are working with Finance,
15 with General Services. We think that we have a remedy for this
16 year. We are going out with a number of federal grants that we
17 think we have a very good opportunity to have on a matching
18 basis.

19 We consider that function very important, especially
20 as we are reviewing our seismic codes, and the historic seismic
21 code has not been updated in ten years.

22 So, we have preserved that function, that person, who
23 will be working on a number of very important issues this year.

24 SENATOR PETRIS: Do you expect to get enough from the
25 feds to make up the loss?

26 MS. KOZBERG: We think we will. There's an
27 indication that FEMA has mitigation money. In addition, through
28 the National Parks Service, there is money, again, to do

1 specific work that's seismically related, and we have the grants
2 going in now.

3 SENATOR PETRIS: Well, there seems to be a
4 contradiction in the budget. They eliminated the money you
5 indicated, thereby eliminating the functions, and yet they're
6 requiring the Bureau of State Audits to conduct a management
7 review of the Office of the State Architect to evaluate the
8 degree to which the State Architect provides -- not provided --
9 but provides oversight, coordination and leadership in meeting
10 the state's property management goals, particularly to obtain
11 the following: one, compliance with the State Contracts Code
12 relating to bidding, that we've been talking about; two,
13 requirements for minority, women, and disabled veterans, and
14 that's specific to the issues that were discussed before,
15 veteran-owned business enterprises; and three, coordination of
16 local government development plans.

17 I don't understand how this can be done -- to observe
18 and give a critique on how they're doing these things -- when
19 they're not doing anything. Can you help me with that?

20 MS. KOZBERG: Are we talking in reference to the
21 Historic Safety Board in this particular instance?

22 SENATOR PETRIS: Yes.

23 MS. KOZBERG: Well, what we have done --

24 SENATOR PETRIS: We're talking about the State
25 Architect specifically, not the Board in this instance. They've
26 both been wiped out. This provision relates to the Architect.

27 This may have been drafted before the cuts were made,
28 but it is in the budget as of now for next year.

1 MS. KOZBERG: Well, the position that was taken in
2 the budget cut was the position for the Historic Safety Board
3 representative. And that is where the cut came.

4 What we have done is, we have maintained that
5 position. As a matter of fact, we're trying to even integrate
6 it more closely into the workings of the Department.

7 SENATOR PETRIS: And how about the State Architect?
8 That's the federal grant you're seeking?

9 MS. KOZBERG: Well, the federal grant we're seeking
10 is to help do some of the work, the focus of the work, the
11 mitigation work and the code work that would be done.

12 I do know that the Historic Board position we've got
13 to treat long-term and take a good look at how, you know, we're
14 going to maintain this, because I understand that this is not
15 the first year it has come up in the budget.

16 SENATOR PETRIS: Do you confer with the Governor on
17 planning the budget for the following year?

18 MS. KOZBERG: Yes, we give input.

19 SENATOR PETRIS: You'll have an opportunity to make
20 your recommendation on the budget?

21 MS. KOZBERG: Yes, and I will sit down with all the
22 affected parties to try and work out a long-term solution.

23 SENATOR PETRIS: For the next budget, we'll try to
24 put it back in.

25 MS. KOZBERG: Actually, we are looking for -- and it
26 will parallel the budget cycle as we go forward -- a cure by
27 December.

28 SENATOR PETRIS: You understand, if they're put out

1 of business, then there's just no agency or effort at all to
2 carry out their very important function. I guess that's why
3 you're trying to restore it.

4 MS. KOZBERG: Absolutely, and historic -- the
5 preservation officer that resides within Resources, Cheralyn
6 Woddell, also feels that it's extremely important to save. She
7 is sharing a federal grant that she has so that the committee
8 can travel to do their work.

9 SENATOR PETRIS: I think I read that somewhere, about
10 the travel.

11 Are you familiar with the reports of the Auditor, the
12 two separate reports? They're very critical of the management
13 of the Museum Board over the past year or two.

14 MS. KOZBERG: I am not.

15 SENATOR PETRIS: I think some effort should be made
16 to supply you with copies, even though you don't want to deal
17 with that directly. Somebody in your shop should be.

18 MS. KOZBERG: I will make sure that I have copies.

19 SENATOR PETRIS: If you have any problem, let me know
20 and I'll get them for you.

21 We also have, going back now to the legality, which
22 I'm concerned about, we have an Attorney General's opinion that
23 say they must comply with the law and petition these two
24 separate agencies. Legislative Counsel also has a similar
25 opinion.

26 You may not be aware of those, either. Perhaps I
27 should have those sent to you.

28 MS. KOZBERG: I would appreciate that, though I'm

1 sure the Undersecretary has all the documentation.

2 SENATOR PETRIS: As I said, I met with her for a
3 couple of hours. We didn't come to any agreement; it kind of
4 fizzled out. But at least we tried. I was concentrating on
5 these same issues.

6 Now, was she appointed after the decision was made on
7 the Museum or before?

8 MS. KOZBERG: The decision --

9 SENATOR PETRIS: To go ahead with the demolition.

10 MS. KOZBERG: I believe that -- I'm not quite sure.
11 I know that the bill was signed in July of 1991. I don't know
12 whether the plans were fully fleshed out at that point in time
13 or not.

14 SENATOR PETRIS: Which bill is that? The Hughes
15 bill?

16 MS. KOZBERG: Yes.

17 SENATOR PETRIS: Then part of that mix included
18 turning over state property to the L.A. Unified School District.
19 Are you familiar with that?

20 MS. KOZBERG: In concept, I'm aware of the concept,
21 but I do not know the specifics.

22 SENATOR PETRIS: I'd be interested in the legal
23 foundation for that. I don't think there's any legal
24 authorization. I don't think we passed any bill authorizing the
25 transfer. You know, it may go to a good cause for a local
26 school district.

27 Part of the plan was to put a school in the Armory --
28 the Armory's the other building I was trying to think of -- and

1 have the L.A. Unified School District go in there.

2 I don't know of any legislative authorization for
3 that. I hope I'm mistaken. I hope maybe you'll be able to find
4 it.

5 Well, let me ask you, what are your goals now that
6 you've run into this hornet's nest, too late to do an
7 about-face, I suppose. What are your plans? What are your
8 priorities with respect to carrying out your duties on this
9 portion?

10 I know Consumer Affairs covers a very big range.
11 Senator Lockyer touched on parts of it.

12 But with respect to these issues, what will you do?

13 MS. KOZBERG: With respect to the Historic Safety
14 Board?

15 SENATOR PETRIS: Yes.

16 MS. KOZBERG: I would, again, be happy, and even if
17 you would convene, or we could jointly convene, to bring the
18 group together so that we could help understand what their
19 priorities are, what they want to accomplish, and see how we can
20 match that up with the appropriate level of funding they need to
21 carry out their goals.

22 SENATOR PETRIS: I would welcome an opportunity to do
23 that.

24 On this Audit, the report is supposed to be made to
25 the Joint Legislative Budget Committee and the fiscal committees
26 by March 31 of next year, so there is a little time for all of
27 us that are interested to work on that.

28 Now, on this recusal, I think it's honorable for you

1 to step down, but the Governor may have a problem of a married
2 couple that is much too talented and whose services are highly
3 desired, but I would hope he would arrange a transfer. Your
4 very talented husband ought to be put in a different shop, and
5 that'll relieve you totally. You don't have to be so cautious
6 and hesitant. You ought to be free. You ought to have your
7 hands free to do the job, and I think this inhibits you.

8 Passing it on to the assistant really isn't the same thing.

9 Perhaps I should speak to the Governor on that --

10 MS. KOZBERG: I think that would be a wonderful idea.

11 SENATOR PETRIS: I'm sure he has so much confidence
12 in him, with good cause, that a suitable assignment can be found
13 that'll relieve you of this burden.

14 MS. KOZBERG: Thank you. I cannot hire or fire my
15 husband.

16 SENATOR PETRIS: Yes, I understand.

17 CHAIRMAN LOCKYER: Well, it's a new age.

18 [Laughter.]

19 MS. KOZBERG: But you might pass that on. That would
20 be very nice.

21 SENATOR PETRIS: Thanks, Mr. Chairman.

22 CHAIRMAN LOCKYER: This might be a frustration that I
23 have with the Insurance Advisor and the Governor, so it's
24 perhaps entirely unfair to raise it in connection with your
25 confirmation, but it does in my mind summarize three years of a
26 relationship, or nonrelationship, with the executive officer.

27 I worked for two years on insurance reform, auto, to
28 try to find ways to save more than no-fault supposedly saves,

1 but avoiding arguments about personal responsibility and so on;
2 doing fundamental change to the tort system.

3 Two years' work, three actuaries, which is torture in
4 itself, for hundreds of hours, hearings and hearings, and on and
5 on.

6 We did it. Probably saved about twice as much as
7 no-fault saves.

8 I couldn't get two minutes of the Governor's time to
9 pitch it. I got a veto message that said, "Thank you very much.
10 No-fault or nothing."

11 So, I guess that's really a complaint I have with the
12 E.O. rather than those who work for him, but since the office of
13 Insurance Advisor is technically in your shop, though it may not
14 be under your wing, I mention it just because this seems to be
15 the appropriate place for us to unload all of our gripes of this
16 sort. It doesn't necessitate any response at all, other than
17 just to express some frustration at the lack of mutuality and
18 inability to work together.

19 SENATOR PETRIS: May I go back to this just for a
20 minute, just to kind of re-emphasize that I'm trying to help
21 you, actually.

22 This is a statement from General Services, Chairman
23 of the board reviewing some of the history here. The statement
24 says that in the Department of General Services, from which this
25 comes, there's 69 structural engineers who review and inspect
26 the work of the engineers and contractors involved in school
27 construction. There are at least 22 project directors who
28 monitor the work of paid outside consultants. There are 11

professionals dedicated specifically to review access compliance for state preservation mandates and federal and state law. Yet, there's only one professional -- one -- assigned to educate, exhort, review, and ensure compliance with the state's historical building code. And that position's been eliminated, the one we've been talking about.

I just want to get that in better perspective to urge you to renew your determination to salvage it. I know you're trying.

MS. KOZBERG: Senator, I feel very strongly about salvaging that, and I think you all saw the movie "Dave". Well, I rolled up my sleeves and went through every dollar in that budget to try and leverage the money.

I am familiar with how to do grants, and so I'm more than willing to write those grants and participate myself in getting that board funded properly. But it does need a long-term solution.

SENATOR PETRIS: Once you get it, I hope you'll keep an eye on the relapse on the part of the Architect in bypassing the other requirements with respect to veterans, disabled, racial and so forth requirements in the bidding process, so we can restore that and strengthen it.

MS. KOZBERG: I do know that --

SENATOR PETRIS: Especially in view of your work with the NAACP down south.

MS. KOZBERG: And we do monitor every month, and I know that Mr. Lockwood has been very concerned, watching the numbers. We are ahead of goals. We can always do better.

1 SENATOR PETRIS: Well, the Architect was behind goal.
2 Thank you.

3 SENATOR AYALA: One question.

4 CHAIRMAN LOCKYER: Senator.

5 SENATOR AYALA: I'd like to revisit the pool fencing
6 issue, with the Building Standards Commission adopting emergency
7 regulations for the construction of barriers around swimming
8 pools, and so forth.

9 Do you believe it's appropriate for a regulatory
10 agency to impose statewide regulations that have been rejected
11 twice by the Legislature?

12 MS. KOZBERG: Well, again, when the Commission voted,
13 it voted the same day it passed out of Senate Appropriations, so
14 that the legislative will at that moment was moving -- that it
15 was moving through.

16 The bill was different than the regulation; however,
17 it was amended as it was heard again, and now there are very
18 large similarities between the bill and the regulations.

19 SENATOR AYALA: What was the emergency that caused
20 this to be adopted?

21 MS. KOZBERG: I wasn't there at the time, but I will
22 tell you that since I serve as Chair of the Building Standards
23 Commission, we have gone into an education program, as you need
24 with all commissions. You have a number of people that come,
25 and they represent one phase or factor in an industry, or a
26 consumer group, but they may not be aware of the open meeting
27 laws. They also may not be totally familiar with the regulatory
28 process.

1 You will find a well-educated Commission now, who
2 understands the regulatory process and the responsibility in it.

3 It is -- the pool barrier regulations have gone out
4 for public comment. They're due to vote again September 22nd.

5 I am sure that what has happened in the Legislature
6 will become part of what will form a final decision. And again,
7 HCD that is the sponsor of these regulations. The Board hears
8 the issue.

9 SENATOR AYALA: I'm not sure if you're answering the
10 question.

11 Do you think it's appropriate for regulatory agencies
12 to impose these conditions when the Legislature rejected them
13 twice?

14 MS. KOZBERG: What happened --

15 SENATOR AYALA: I know they're not the same.

16 MS. KOZBERG: No, I hear what you're saying.

17 At the time we did this, and all parties indicated
18 they would be willing to sit down and talk together, the bill
19 was moving through the Legislature, at the time we took the
20 vote. It was subsequent to the Commission's vote that the
21 Senate voted down the bill.

22 SENATOR AYALA: I'm not sure you answered my
23 question.

24 Do you think it's appropriate for them to do that,
25 take action on some regulatory issue that the Legislature has --

26 MS. KOZBERG: No, the Legislature is the final
27 authority.

28 SENATOR AYALA: But if they defeated it twice, yet

1 the agency adopts emergency regulations, do you think it's
2 appropriate for them --

3 MS. KOZBERG: No, I do not think so.

4 SENATOR AYALA: That was the answer I was looking
5 for.

6 MS. KOZBERG: Okay, sorry.

7 CHAIRMAN LOCKYER: I have nothing further to ask
8 about.

9 Let me inquire if Members do?

10 We'll renew a willingness to have anyone in the
11 audience testify if they wish.

12 I would recommend, since action doesn't have to be
13 taken until January --

14 MS. KOZBERG: No, it's December 7th.

15 CHAIRMAN LOCKYER: I thought you were appointed in
16 early January.

17 MS. KOZBERG: No, I was appointed December 7th.

18 CHAIRMAN LOCKYER: Well, that's fine. We don't have
19 to do anything until then.

20 I think we can probably keep it under submission for
21 the time. There's, perhaps, an opportunity for the Committee to
22 vote in the next week. The greater likelihood is to wait until
23 December, because we'll be back on, I think, the 5th, and we
24 won't have new hearings, or anything of that sort.

25 Just for myself, what I am trying to sort out is the
26 conflict I feel between knowing that this is an exemplary
27 appointment, that you're well-suited and energetic, doing what
28 seems to be a good job, and a range of concerns about various

1 subunits in your Agency that seem to be examples of
2 bureaucracies that need to be reined in. I'd like some more
3 specific evidence of that happening before moving forward, and
4 then some of these philosophical disputes that trouble me, and
5 I'm not quite sure what the appropriate thing to do in those
6 circumstances is. That is, do we just say, well, the Governor
7 gets whomever they want, even if you disagree philosophically,
8 or do we have some role in that domain. I'm not sure.

9 So, I'd like some time to mull and think and consult
10 with my colleagues, but we'll try to be prompt and fair.

11 MS. KOZBERG: Thank you, Senator.

12 CHAIRMAN LOCKYER: Thank you for a nice discussion.

13 SENATOR BEVERLY: Mr. Chairman, just a comment.

14 I would hope we could act before December, if for no
15 other reason, who's going to be on the Rules Committee come
16 December 7th or December 5th.

17 CHAIRMAN LOCKYER: Well, there'll be an election.

18 SENATOR BEVERLY: I understand, but this is a member
19 of the Governor's personal staff, not another appointment.

20 CHAIRMAN LOCKYER: I understand. I'm aware, and
21 that's 40 percent of the problem.

22 Thank you very much.

23 MS. KOZBERG: Thank you.

24 CHAIRMAN LOCKYER: I think you'd probably like to
25 have a few minutes. Why don't we take another five minutes, and
26 then Mr. Dunphy will be next.

27 [Thereupon a brief recess was taken.]

28 CHAIRMAN LOCKYER: One thing we've learned,

1 Mr. Secretary, is that you're a patient man. You've had to sit
2 through the stuff yesterday and again this morning. I'm sorry.

3 It's mostly a problem caused by being the end of the
4 session.

5 MR. DUNPHY: I understand, Senator. I hope my reward
6 comes at the end.

7 [Laughter.]

8 CHAIRMAN LOCKYER: There's one there somewhere.

9 We have a quorum present, and thank you, sir, for
10 your presence.

11 Did you have something, it looks like you do, that
12 you wanted to --

13 MR. DUNPHY: I have a statement, Senator, but in the
14 interest of brevity --

15 CHAIRMAN LOCKYER: Go ahead, please.

16 MR. DUNPHY: I certainly appreciate the opportunity
17 to appear before the Committee today. It's obviously an honor
18 to serve the State of California in this capacity and a
19 privilege to work with the Members of the Legislature for the
20 benefit of the State of California.

21 Let me also say that I understand only too well the
22 seriousness of the tasks that face the Agency as we prepare for
23 the future. And as you know, just 14 days after having been
24 appointed, on January 4th, the Northridge earthquake sent
25 shock waves through the state, Southern California and the
26 nation, and I might add, internationally as well. It's a jolt
27 that has affected us all, and will continue for some time.

28 But even in the face of such an unprecedented

1 disaster, we were able to transform, in less than six months,
2 from the rubble of our crippled transportation networks, the
3 majority of freeways to pre-quake capacity, keeping traffic and
4 commerce flowing, which is the life blood of our economy.

5 We helped to provide immediate shelter to those in
6 need, and as we continue to rebuild our damaged neighborhoods,
7 we also recognize the sizable challenge of providing for future
8 safety, housing and transportation needs.

9 I remain optimistic that we can meet these challenges
10 to provide for California's future. I plan to call upon and
11 encourage the same can-do attitude and spirit of innovation that
12 allowed us to rebuild the Santa Monica Freeway in just 65 days.

13 As Governor Wilson said, and it was widely reported,
14 "They can shake us, but they can't break us."

15 California has the talent pool and the will to
16 succeed. I believe that within the Wilson administration and
17 the Legislature, there is a will to come up with the solutions,
18 to face the issues facing government today, and I look forward
19 to working with you to achieve those goals.

20 Thank you, sir.

21 CHAIRMAN LOCKYER: Thank you.

22 Any cards in your pocket, reminders from your
23 daughter?

24 He has this little cute habit of keeping comments in
25 his pocket: the slogan for the day, or the month. It's nice.

26 Well, let me just ask, first, if there are questions
27 from any Members of the Committee? Senator Ayala.

28 SENATOR AYALA: You mentioned the earthquake issues

1 and problems that we experienced earlier this year.

2 As you know, we tried to get the funding through a
3 general bond that failed in June. Does the state have any plans
4 to carry out, or did you have any back-up plan if that issue
5 failed? Where are we today? Are we in a vacuum that we don't
6 know where we're going in terms of funding for these programs?

7 MR. DUNPHY: Let me answer first by saying that the
8 Legislature and the Governor have always believed that the
9 maintenance of the freeway system is the number one priority.
10 You have to protect that which you have.

11 The back-up plan was always that the first revenues
12 to be achieved through the gas tax were to be applied to the
13 preservation of the system, and that includes the retrofitting
14 and the restoration of the freeways, should they need
15 restoration. So, that back-up plan was always there.

16 What it effectively did, however, without the
17 addition of revenue from any source, was to impact the progress
18 of other construction projects that are contained within the
19 State Highway Implementation Plan.

20 And so, the planning was there, and the effort to
21 secure additional revenues through the Proposition 1-A to
22 provide about a billion and 50 million dollars for the
23 retrofitting of bridges throughout the state. And I add that
24 because I think there was a misperception on some of the voters'
25 part that that was only to apply to the Los Angeles area, where,
26 in fact, it was to provide funding for what we refer to as phase
27 two of bridges, about 1355 bridges, throughout the state.

28 I might add, for Senator Lockyer and Senator Petris,

1 that there are more in the Bay Area than there are in the Los
2 Angeles area.

3 So that the revenues that we expected were denied us
4 by a vote of the public, and so we had the plan in place to go
5 forward by utilizing existing revenues from existing sources.

6 What we have done, and if you'll permit me to expand
7 on that, I might answer in advance questions with respect to the
8 action taken by the California Transportation Commission to
9 secure approval for the implementation of the Katz-Killea bill,
10 a bill that was passed in 1991, right after the Loma Prieta
11 earthquake, which recognized the problem that might exist
12 between the competition for funds for seismic retrofit and for
13 the construction of STIP projects. And that bill specifically
14 provided that the California Transportation Commission, as an
15 issuing agency, should they reach certain findings of needs,
16 could issue short-term revenue anticipation notes, secured only
17 by the future gas tax revenues, not General Fund revenues, but
18 gas tax revenues. And that those notes would have -- could
19 extend no farther than the year 2000, and would provide the
20 repayment source for those notes, and therefore making them
21 marketable.

22 That plan is in place at this point and will provide
23 for uninterrupted seismic retrofitting, while permitting some
24 vary important projects to go forward.

25 SENATOR AYALA: What is the rationale behind bonds
26 issued to take care of the highways and freeways in our state
27 versus a sales tax?

28 Now, the Bay Area problem, has that been completely

1 restored now --

2 MR. DUNPHY: No.

3 SENATOR AYALA: -- due to the earthquake?

4 MR. DUNPHY: I expected a question on that.

5 No, sir. For a variety of reasons, answering your
6 last question first, the restoration of the Cypress Freeway and
7 the completion of the I-280 are underway, but they have been
8 stalled by a variety of local decisions which reflected views on
9 where the freeway, particularly the Cypress, should be restored,
10 and it necessarily, in the face of a rebuild in place issue,
11 caused the local community to ask questions about where it
12 should be built. And so, a new route was adopted. And through
13 that process, environmental impact reports, et cetera, meeting
14 community needs, that greatly stalled the Cypress.

15 With the 280, the Department actually began
16 restoration and retrofitting of that freeway, but were stopped
17 by the seismic safety review committee, seismic safety peer
18 group, actually, who said that the method adopted did not meet
19 their more conservative view. So, we stopped for a year while
20 research was conducted at the University of California at San
21 Diego, in their major structures laboratory, and determined a
22 way in which we could retrofit that two-level viaduct. Very
23 complicated structure.

24 And following the completion of that work, the
25 restoration work began with about five new contracts to complete
26 it.

27 SENATOR AYALA: None of the delays were the result of
28 lack of funding. The sales tax was sufficient to take care of

1 the problems.

2 MR. DUNPHY: Yes, and in the Bay Area, you'll recall
3 that the federal government obliged itself to pay for the
4 restoration of those freeways. So, that was -- there was not a
5 funding issue at no time. They're almost all local issues
6 concerned with where you build it, how you build it, et cetera.

7 SENATOR AYALA: I guess what I'm trying to point out
8 is the fact that we have the sales tax for, what, two and a half
9 years, whatever it was, and then --

10 MR. DUNPHY: We had a quarter cent sales tax for a
11 period of time, and I don't recall what that period was.

12 SENATOR AYALA: And we had sufficient funding, with
13 the help of the feds, to take care of the issues.

14 I just wonder why we're going into the bonding
15 problem here, where we extended, and it takes 40 years to
16 amortize it? The cost of the bond will be twice that amount of
17 what we really are borrowing from future generations. People
18 that will come 30 years from now don't even know where the
19 earthquake area is, but they'll be paying for it, as opposed to
20 a sales tax that would terminate in two or three years, and it's
21 gone.

22 So, heaven forbid that we have another type of
23 problem earthquake-wise, seismic, and we'll have two bonds now
24 trying to come up with the funding for that. And again, folks
25 that come in 30, 40 years from now will help amortize the bonds
26 and they don't even know where Northridge is today.

27 I don't understand the Governor's philosophy on this
28 issue.

1 MR. DUNPHY: Senator, I think that there is always
2 room for discussion as to the efficacy of sales taxes and bonds.

3 But you've permitted me to pull one of my cards from
4 my pocket, and to remind you of the differences that pertain to
5 Loma Prieta, 1989, and Northridge, 1994.

6 At Loma Prieta, in '91, the sales tax was 6 percent;
7 today it's 7.25 percent. The gas tax, both federal and state
8 combined was 18 cents; today it's 36.4 cents. The interest on
9 G.O. bonds then was 6.84, compared to 5.23, a much lower
10 interest rate on bonds today. And the unemployment rate in the
11 State of California was 5.1 at Loma Prieta; it was 9.4 at
12 Northridge.

13 The Governor and I will clearly support that belief
14 that the economy of the state continues in a fragile state, with
15 recovery being very slow, and that a sales tax applied is an
16 instantaneous withdrawal from the economy of a certain amount of
17 money, which does not happen when bonds are sold or short-term
18 notes.

19 The people who give up the money are the investors in
20 the notes or the bonds, and they don't draw it from the economy.
21 And so, I believe that those thoughts certainly are among those
22 that the Governor has in his mind, and I certainly recognize
23 that the economy cannot stand too many hits. And so, I would
24 suggest that that's the driving --

25 SENATOR AYALA: Given all the things you just spelled
26 out here, bond issues are paid from the General Fund. And where
27 does the General Fund get the money but from the taxpayers?

28 MR. DUNPHY: They have been, sir, except this year, I

1 believe, the State Highway Account is providing funding for the
2 bonds.

3 I know that typically G.O. bonds are paid for from
4 the general revenues. They're paid in the future as opposed to
5 current, and I think that's what we're talking about.

6 SENATOR AYALA: Again, the General Fund is provided
7 by taxes all over the state, is it not, the General Fund.

8 MR. DUNPHY: Just like the sales tax.

9 SENATOR AYALA: So who are we kidding when we talk
10 about a sales tax, and I know tax is a dirty word to a lot of
11 people. I pay them, too, so I don't like them. But I'd rather
12 pay for two years and not string it out over 40 year. When you
13 get through paying for the bond, it'll be three times, two and a
14 half to three times, what the bond's value was, the amount of
15 the bond. You'll be taxing people that come in other
16 generations.

17 It doesn't make sense to me, when we talk about a
18 sales tax, and we all say, tax, you know, it's election time, so
19 we don't talk about a tax. However, we do pay, to be redundant,
20 we pay the bonds from the General Fund, which is tax. So, I
21 don't understand what the difference is.

22 Thank you.

23 MR. DUNPHY: You're welcome, sir.

24 CHAIRMAN LOCKYER: I think Senator Petris wanted to
25 perhaps follow up on some of those kinds of issues, but perhaps
26 I could, since he had to step out briefly, call on Senator Kopp,
27 whom I think is in the same policy universe with respect to some
28 concerns or questions he might have.

1 SENATOR KOPP: Thank you, Mr. Chairman and Members of
2 the Rules Committee.

3 I don't want to prolong the discussion which Senator
4 Ayala instituted with respect to the funding deficiency in the
5 State Highway Account, and the funding deficiency for seismic
6 safety retrofitting. My views are well known, and obviously,
7 they're at variance with Mr. Dunphy's and with the Governor.

8 I'd just add, perhaps, a footnote to that line of
9 inquiry by Senator Ayala. And that is the abandonment of the
10 time-honored policy of using gasoline tax money for not only the
11 projects themselves, but also for retrofitting and for
12 reconstruction. And that has certainly other elements than a
13 sales tax. Plainly and simply, the gasoline tax is the
14 quintessential user's fee: those who use it should pay.

15 And I'll add one more footnote, and that is, I hear
16 discussions about a vehicle mile tax. And that's my first
17 question to Mr. Dunphy.

18 Is there advocacy of substituting a vehicle mile tax
19 within the Agency?

20 MR. DUNPHY: Senator, there's no discussion that's
21 come to my mind.

22 I believe that there are discussions, and I think
23 appropriate discussions, relating to the structural funding
24 problems associated with transportation, particularly the
25 highway system.

26 Yesterday, during Ms. Schafer's hearing before this
27 body, a number of people discussed the zero emission vehicles,
28 which are being mandated by the state. The alternative fuels,

1 ethanol particularly, which is taxed differently from gasoline
2 taxes. And intrinsically, the increased efficiency of
3 automobiles to get more miles per gallon, and therefore you
4 collect fewer taxes per gallon.

5 So, there is an increasing attention being paid to
6 the manner in which highway, particularly, let's call it
7 transportation improvements and maintenance, is paid for.

8 And in that context, I would also call your attention
9 to a statement that I made at the time that I appeared before
10 the California Transportation Commission, wherein the Governor
11 has asked that I gather together a group of business people and
12 transportation people around the state to examine current
13 issues, of which transportation funding should be a component.
14 And that it needs necessarily to address a vehicle mile tax, if
15 you will. I think also we cannot avoid talking about congestion
16 pricing and/or pollution pricing, and those ways in which we
17 fund and construct our freeways.

18 SENATOR KOPP: Well, I want to divorce congestion
19 pricing and pollution pricing from vehicle miles.

20 So that my colleagues are informed on it, that's
21 based on the concept that the more miles you drive, the more tax
22 you'll pay, rather than the gasoline tax, which is based upon
23 the amount of gasoline you consume, which in itself is a
24 motivator to drive an automobile that obtains more mileage per
25 gallon of gas, and that in turn has benign consequences as far
26 as pollution is concerned.

27 But what also caused me to ask the question about the
28 discussion is that some of the people who have been mentioned

1 for this task force that you're convening are people who are
2 advocating a vehicle mileage tax. I want to state that I am
3 opposed to that, strongly opposed to that tax. So, that
4 concerns me that some recommendation to that effect may arise
5 from the conference.

6 The second matter that I want to inquire into is what
7 has happened with respect to seismic safety retrofit of toll
8 bridges. We have nine toll bridges in the state system,
9 starting with the Coronado Bridge, and then the Vincent Talmadge
10 Bridge, and then the Dunbarton Bridge, the San Mateo-Hayward,
11 the Bay Bridge, Richmond-San Rafael, and the Benecia-Martinez
12 Bridge in Antioch, and Carquinez.

13 One of the important issues, one that I discussed
14 with you in Senator Lockyer's office last month, was the budget
15 agreement that provided that for the fiscal year '94-95, \$136
16 million would be appropriated from the State Highway Account for
17 the seismic safety retrofitting needed on all, as I remember,
18 except two of those bridges. There were two, as I remember, on
19 the Bay that weren't part of that list.

20 And I was surprised, and that was the reason for the
21 meeting in Senator Lockyer's office, to find that only \$40
22 million was appropriated from the State Highway Account for
23 1994-95, and that the balance of about \$90 million would be
24 fought all over again the next fiscal year and probably the
25 fiscal year after that as to whether that money should be
26 appropriated from the State Highway Account or from the toll
27 bridge revenue sub-account.

28 The agreement was to settle the \$136 million for

1 '94-95, because no state agency can enter into a contract
2 without having budget authorization for the full amount of the
3 contract. And a \$136 million contract signed during this
4 fiscal year must have budget authorization for the full amount,
5 even if, as you stated in that meeting and as has been
6 reiterated in a letter from the Director of Caltrans, even if
7 only \$40 million can be spent in this fiscal year.

8 And the budget control language, for the benefit of
9 the Members, the budget control language in this year's budget
10 stated that Caltrans couldn't use toll revenues for seismic
11 retrofit until all Regional Measure 1 projects were completed.
12 Regional Measure 1 was approved by the voters in seven of the
13 nine Bay Area counties in November, 1988, that raised the toll
14 to a buck on those bridges; on six of the seven it was less than
15 a buck. And it raised the toll, based upon the promise to the
16 voters, of specific projects, like a new span on the Carquinez
17 going westward. That one was opened in 1927; should be replaced
18 and other new projects.

19 Now, the Governor vetoed that language, but with the
20 assurance -- and it's too bad Senator Lockyer isn't here -- but
21 the assurance was to him that the \$136 million would be
22 appropriated from the State Highway Account for that seismic
23 retrofitting.

24 Now that's been reversed. That is a very serious
25 subject with me, Mr. Dunphy.

26 I guess I can ask you how you justify or how it's
27 justified, but it probably won't alleviate my concern or my
28 agitation about it. To put it in plain words, it's almost as if

1 you have to get a signed contract, because the year before, I
2 went through that as far as the budget was concerned. This
3 year, Senator Lockyer did, and it's like you have to have a
4 signed contract that's somehow enforceable in the courts.
5 That's \$90 million that's been taken away.

6 And I know that next year, you'll want to take it out
7 of the toll bridge revenue sub-account; right?

8 MR. DUNPHY: Well, Senator, there are probably
9 a number of discussions that could ensue. I'm not exactly --
10 where to begin.

11 But first, let me emphasize that I consider it one of
12 my fundamental responsibilities to assure that all of the Bay
13 bridges, all of the toll bridges, are seismically retrofitted.

14 I do not personally come down on the side of where
15 that revenue should come from. Each of the last two years, the
16 Legislature and the Governor's Office have had a debate and
17 discussion on what was deemed appropriate. And I think there
18 clearly is a difference of opinion.

19 I believe that there is a -- there are a body of
20 folks who would believe that it is appropriate that revenues
21 from the toll bridges be used to seismically retrofit those
22 bridges. Much in the same sense as you have referred to
23 gasoline tax as being a user tax, those who use the bridges are
24 also users of a facility that could be paid for from their use
25 of those bridges by tolls.

26 SENATOR KOPP: So, they shouldn't have to pay gas tax
27 for the gas used going across those bridges?

28 MR. DUNPHY: I'm not suggesting that, but that the

1 folks in Alturas, or Chico, or Imperial Valley, who never use
2 the bridges, would indeed have their highway improvement money
3 diverted to the improvement of the bridges. Should the State
4 Highway Account --

5 SENATOR KOPP: Are those bridges part of the state
6 highway system?

7 MR. DUNPHY: Yes, sir.

8 SENATOR KOPP: So then, logically, I shouldn't have
9 to pay tax on the gasoline I use going across the bridge,
10 because otherwise, I'm paying twice. I'm paying the tax on the
11 gasoline I use up, and then I'm paying the toll in addition to
12 that.

13 MR. DUNPHY: Well, that's what good arguments are
14 made over.

15 SENATOR KOPP: Isn't that fact irrefutable? Aren't I
16 paying tax on the gasoline I use up?

17 MR. DUNPHY: Yes, you are.

18 Let me also remind you of another quirk in the law,
19 if you will, that the federal government provides no funding for
20 the restoration of bridges that receive tolls that are used for
21 other than simple bridge maintenance. Therefore, if you were to
22 take the \$650 million --

23 SENATOR KOPP: Let me stop there. There's a quirk to
24 that quirk, too. The federal government paid \$60 million for
25 resurfacing the deck of the Golden Gate Bridge. And it did it
26 on the rationale that the Golden Gate Bridge District operated
27 bus transit service.

28 Bay Bridge tolls are used in large part to defray the

1 costs of operating the AC transit service, and BART and the
2 Muni. So, there is a parody of use of money.

3 MR. DUNPHY: That is -- I would not question that you
4 are correct in that. However, I think I'm equally correct that
5 the federal government will not provide any matching money for
6 the restoration of the bridges. And that if -- if the \$650
7 million comes totally out of the State Highway Account, with no
8 matching federal money, that draws down significantly on the
9 available State Highway Account funds that can be spent.

10 So, it is a siphon that draws a great deal of money
11 into the state bridges.

12 Senator, I think you and I both know the need exists
13 currently to retrofit those bridges. And I have directed the
14 Director this year to do everything that he can toward the
15 restoration of the bridges through basically preliminary
16 engineering, and some soils investigation, et cetera, and will
17 spend it all out of the State Highway Account, as the budget --

18 SENATOR KOPP: That's 40 million, and then next year,
19 we'll be fighting about allocating next year \$52,810,000. We'll
20 fight about that. And then in '96-97, \$43,190,000.

21 Last year, '93-94 budget, I obtained a commitment
22 from Kevin Sloat that the Governor wouldn't veto the budget
23 language on toll bridge. You'll remember last year, again,
24 there was \$40 million, and because the toll bridge sub-account
25 is a continuous appropriation, Caltrans can just spend it,
26 appropriate it itself or spend it, it's continuously
27 appropriated to Caltrans, they were going to take \$40 million.
28 They wound up taking \$8 million, and that was part of the budget

1 control language. Kevin Sloat assured me the Governor wouldn't
2 veto it. The Governor did not veto it.

3 This year, the assurance was \$136 million would be
4 obligated from the State Highway Account, and that budget
5 control language was vetoed with the promise, "Don't worry. We
6 will take the 136 million and obligate it to the State Highway
7 Account," and it hasn't been done.

8 So, we've lost it. We've lost \$90 million.

9 The third issue that I wanted to comment on was, I
10 have a bill, as you know, which would sever Transportation as a
11 separate agency from Business, Transportation and Housing.

12 Is it your position, independently of the Governor's,
13 that that bill should not be enacted?

14 MR. DUNPHY: I would personally oppose it, and I'd be
15 happy to tell you why.

16 SENATOR KOPP: Well, I don't want to take up time of
17 the Committee here, but I invite the attention of the Committee
18 to the fact that that bill is in Assembly Ways and Means, as I
19 recall. I intend to pursue it and present it. I can secure
20 passage in the Assembly to the Governor for signature.

21 Circumstances change. But anyway, that's part of the picture
22 that's out there.

23 That's more informational for the Committee.

24 Thank you, Mr. Chairman.

25 SENATOR CRAVEN: You're welcome.

26 Senator Petris, do you have any comments?

27 SENATOR PETRIS: Yes.

28 You commented on the Cypress thing, but I didn't get

1 the whole thing. I had to leave. I'm sorry.

2 That's in my district, as you know. I get inquiries
3 all the time as to how we're doing. You mentioned the delay
4 caused by the local objections to the proposed route, and so
5 forth, and now they're finally settled on it over the railroads,
6 and so forth.

7 MR. DUNPHY: Yes, aright.

8 SENATOR PETRIS: What's the status of that now? Is
9 that moving ahead?

10 MR. DUNPHY: Yes, it is, Senator. The construction
11 work is divided, I believe, into seven contracts that are
12 sequenced; first being the longest they have to be completed,
13 and those are those that go through the railroad areas. That
14 work is under construction.

15 I visited it last week. Foundations and columns are
16 being poured, and the railroads are getting out of the way and
17 realigning their lines, et cetera.

18 Those are contracts in Title C and D. The next
19 contracts will be other letters, if you will, of the alphabet,
20 up through F, and we'll go forward incrementally with a
21 conclusion that they will be constructed about a year faster
22 than earlier program because we've taken some of the contracting
23 techniques that we used at Northridge and are incentivizing
24 [sic] one of the contracts that was the longest in term and at a
25 cost of about \$3 million.

26 We've been able to secure about a one-year
27 acceleration on the total completion of the project.

28 SENATOR PETRIS: Does that system involve a different

1 kind of preplanning and cooperation with the contractor and
2 Caltrans, and so forth?

3 MR. DUNPHY: It --

4 SENATOR PETRIS: That was done at the Caltrans
5 building in Oakland, as I recall, and they accelerated that
6 substantially through this other method. I wondered if that's
7 the same idea.

8 MR. DUNPHY: I can't tell you because I'm not
9 familiar with the Oakland building, but the incentivization takes
10 place by asking the contractors to bid both the dollar amount
11 and the number of days amount. And they add those two together,
12 and the low bidder is awarded the contract.

13 And we have determined that by both changing the
14 sequence of performing the work, and incentivization, that we can
15 accelerate by about 12 months.

16 SENATOR PETRIS: That's a lot.

17 MR. DUNPHY: Yeah, it is. When you look at what we
18 did in Northridge, it's extraordinary, quite frankly.

19 We've been able to do, and I'll simply add, we've
20 been able to do a similar thing, not quite the same, at the 280
21 in San Francisco. We will open up, I think -- well, we have
22 opened up five lanes of traffic where we had two on the 280,
23 with -- while traffic is underway, we're continuing the
24 retrofitting, which is a chancy but safe thing, but it shows
25 aggressiveness in trying to get the traffic moving again.

26 SENATOR PETRIS: You mentioned the importance of
27 maintenance.

28 MR. DUNPHY: Yes.

1 SENATOR PETRIS: We get complaints in our office
2 about maintenance up and down 880.

3 MR. DUNPHY: Yes.

4 SENATOR PETRIS: Is there some project going on now
5 to bring it up to snuff?

6 MR. DUNPHY: I can't tell you the specific on 880,
7 except to repeat again the importance of maintenance in
8 maintaining in good operating condition the -- all of the
9 highways.

10 And one of the issues that the state faces is that
11 the traditional life span, life cycle, of a state high is
12 designed at 20 years. We actually secure about a 30-year design
13 life out of our freeway designs.

14 But if you look at 80, and 5, and 101, they're over
15 40 years old. So, the need for maintenance will be a growing
16 budget account.

17 SENATOR PETRIS: Is that a function of the materials
18 that are used for the highway itself, for the road?

19 MR. DUNPHY: It's a combination. It's not so much a
20 function of the materials that were used as opposed to the use
21 of the highway, the numbers of trucks and vehicles using the
22 roads.

23 The number -- the number of vehicle miles traveled in
24 the State of California has significantly exceeded the
25 anticipation of 20 or 40 years ago.

26 SENATOR PETRIS: That seems to be the case all the
27 time. We always seem to fall short, even though we try to allow
28 for it. It's very hard to predict, I know, but that's been a

1 pattern we've been in for many decades.

2 Some people, when I try to explain this, point to the
3 Appian Way that's still in use, built by the Romans. I wonder
4 if we should go over there and figure out what they're using,
5 even though horses' hooves are different from gigantic trucks.

6 Do you have any research being done on that?

7 MR. DUNPHY: I do not, no, sir. I suppose they built
8 those for elephants.

9 SENATOR PETRIS: No, that was Hannibal.

10 MR. DUNPHY: I can't help you.

11 SENATOR PETRIS: On the goals you mentioned before,
12 on the hiring goals, are you in sing with the goals; are you
13 above them or below them in personnel?

14 MR. DUNPHY: The hiring goals pose an intrinsic
15 problem. The goals are not too difficult to achieve.

16 I would call your attention to the fact that in the
17 Northridge earthquake, the Director of Caltrans set a goal of 40
18 percent minority, women, all the MBE-WBEs. And he achieved it
19 in almost all of the contracts; sometimes a couple percent
20 below, sometimes a couple percent above.

21 You've met a goal. You've met a statistical goal.
22 The problem is what makes up that minority composition, and the
23 problem that the African-American community does not enjoy a
24 sufficiently high percentage to satisfy their particular needs.
25 The women-owned and the Latino-owned enterprises do
26 significantly better, so that there -- particularly in Oakland
27 at the Cypress, the local community is very anxious to have
28 local people --

1 SENATOR PETRIS: Yes, I was going to come to that
2 also. That came up in meetings, many meetings that were held
3 with Caltrans, about hiring local people.

4 MR. DUNPHY: We've done -- we've done such things as
5 permitting a new technique of a mentor-disciple, if you will, as
6 a subcontractor to a general contractor. That works like this.

7 A major -- let's say, a majority contractor with
8 skills and experience, will couple with a minority contractor
9 who either doesn't have bonding capacity or particular
10 experience. And they will permit that to qualify as a
11 subcontractor, meeting goals.

12 And the mentor effectively helps educate, teach,
13 train, et cetera, the minority contracting company to learn that
14 particular business and to benefit from the experience.

15 Because I see one of the biggest problems with
16 particularly the African-American community, they haven't had
17 the training and/or the opportunity and/or the bonding capacity
18 to elevate, to help themselves achieve the goals that they want.
19 And this particular mentor-disciple program will provide the
20 kind of training that should help.

21 SENATOR PETRIS: How long has that been in effect?

22 MR. DUNPHY: It's been introduced on the Cypress. It
23 is something that will be going on in your district, and we're
24 working very hard to make that work.

25 SENATOR PETRIS: Is it true that the Altamont Pass
26 will be subject to a toll booth, or something?

27 MR. DUNPHY: Well, I read that in the paper. I have
28 learned I shouldn't believe everything I read in the paper.

1 SENATOR PETRIS: It wasn't a press release of yours,
2 obviously.

3 MR. DUNPHY: No, it wasn't.

4 SENATOR PETRIS: Or Van Loben Sels. There was a
5 blurb on it in the paper.

6 CHAIRMAN LOCKYER: I missed that one.

7 SENATOR PETRIS: Well, you may want to inquire.

8 CHAIRMAN LOCKYER: I certainly will.

9 SENATOR PETRIS: I'd like to go over to another
10 department of yours -- you have a lot of responsibilities -- and
11 that's Housing.

12 MR. DUNPHY: Yes, sir.

13 SENATOR PETRIS: Particularly farmworker housing.
14 There's been a lot of criticism about the program. I'm sure
15 it's been brought to your attention.

16 At one time, I carried a lot of legislation relating
17 to expanding our housing for farmworkers, and the problems were
18 that there was very little housing provided, and it was very
19 shabby. I remember in San Diego County, I had pictures of holes
20 in the ground where some farmworkers were living, actually living
21 in holes in the ground. So, if they elevated to a lean-to under
22 some corrugated iron, that was luxury compared to the holes in
23 the ground.

24 I haven't heard those kind of complaints lately. I'm
25 going back a few years. But I still get a lot of criticism
26 about laxity in enforcement of standards in housing that is
27 provided, especially important in monitoring whatever the
28 private sector provides, as well as keeping an eye on the state.

1 Are you up to date on housing arrangements that we're
2 trying to make for farmworkers?

3 MR. DUNPHY: I am conscious of the responsibility of
4 Housing and Community Development to monitor and assure that
5 there is safe and adequate housing for migratory farmworkers.

6 SENATOR PETRIS: We have about 900,000, I understand,
7 in that category in California; 900,000 migratory farmworkers, a
8 large percentage of whom need housing.

9 MR. DUNPHY: Yes.

10 I am reminded of a Legislative Analyst remark that
11 suggested that the Department was, perhaps, lax in its
12 enforcement, and at the same time suggested that since it's a
13 General Fund agency, that the resources available to it almost
14 work in contradiction to the need to do the work. So, there's a
15 paradox involved there.

16 I think that the budget conditions for the last
17 several years have mitigated against as much enforcement as
18 perhaps is necessary.

19 SENATOR PETRIS: Well, if you've seen the Legislative
20 Analyst's comments, I think you'll agree that there's a real
21 need for more inspectors. We don't have them.

22 MR. DUNPHY: We do; we need more budget. And it's
23 one of those problems that each of you as Senators, and Senator
24 Lockyer particularly, are faced with the either-ors, and the
25 alternatives that are sprinkled throughout the budget. It's
26 very difficult.

27 CHAIRMAN LOCKYER: Well, it may be there ought to be
28 greater effort to get those who benefit from available

1 workforces that are healthier because of housing being available
2 to pay a fair share of those burdens. I don't think there's
3 been any real effort to enact fees that are sufficient to cover
4 the enforcement activities.

5 SENATOR PETRIS: As a matter of fact, the Department
6 has suggested raising the rents. They can hardly afford to pay
7 what they're paying now. The revenue ought to come from some
8 other sources. The state is providing camp sites, and different
9 kinds of housing. We've got to find a way to increase that
10 revenue.

11 Are you working on that in reaction to the reports
12 you've been receiving?

13 MR. DUNPHY: I have no current program, Senator. Not
14 that I'm ignoring it; it's an issue that I have not been
15 currently working on.

16 The Department is aware of the problem and the
17 criticism.

18 SENATOR PETRIS: Who's the head of that?

19 MR. DUNPHY: Tim Coyle.

20 SENATOR PETRIS: Yes, I've met with him from time to
21 time.

22 MR. DUNPHY: Yes.

23 The actions that we can take are to try to generate
24 within HCD efficiencies that can cause their internal operating
25 and administrative budget to go down, and that is taking place.
26 There's been a significant reduction in forces because, in part,
27 the housing bond that was to be a part of Proposition 1-A
28 failed, and we're reducing significant staff.

1 If we can convert some of that staff to enforcement,
2 we can get some help out of it. But otherwise, it comes out of
3 a Budget Act allocation.

4 SENATOR PETRIS: General Fund.

5 MR. DUNPHY: Yeah, it is something that needs to be
6 done. I have -- it is -- has come to my attention. I am aware
7 of the need to do it.

8 SENATOR PETRIS: Does the Governor have a program to
9 improve that situation? Have you recommended something to the
10 Governor?

11 MR. DUNPHY: Not at this point, sir.

12 SENATOR PETRIS: Are you planning to?

13 MR. DUNPHY: I think I should give it the attention
14 that it deserves.

15 SENATOR PETRIS: I hope so. It's really a blight on
16 California.

17 These conditions have existed more or less bad for a
18 long, long time. I think it's time we faced up to it, and even
19 if we don't have the money, we ought to have a goal and get as
20 close to it as we can.

21 I remember carrying legislation when Deukmejian was
22 Governor for a revolving fund, at low interest, 3 percent, to
23 make it available to the private sector. The Farm Bureau
24 supported it. Other individual growers supported it. They
25 said, "If you lend us the money at that rate, we'll be happy to
26 build better accommodations ourselves." And the Governor vetoed
27 it because he didn't think the state should be in the housing
28 business.

1 I reminded him we were already in the housing
2 business. We had these migrant camps funded by the state. I
3 said, "I'm trying to get you out of the housing business, you
4 know. Let the growers who are willing to do it, do it."

5 Maybe that should be revived. Would you favor some
6 kind of a revolving fund that, if we had the money, to provide
7 the resources to growers who are willing to tackle the problem?

8 MR. DUNPHY: I would certainly want that to be one of
9 the options.

10 SENATOR PETRIS: Well, I hope you keep working on it.
11 Even without the money, we ought to have a goal so that when the
12 money comes in, we can start catching up. It's really
13 disgraceful, almost a million workers subjected to this
14 perennial lack of decent, adequate housing.

15 How many more inspectors do you think you would need
16 to have an adequate program?

17 MR. DUNPHY: I can't tell you that.

18 SENATOR PETRIS: You're not on top-down on a day-to-
19 day basis; you're above that agency. I'd have to ask Mr. Coyle
20 about that, I guess, to get more detail.

21 MR. DUNPHY: I think we could probably equate the
22 dollars needed with some budget allocations. They cost so many
23 dollars per PY.

24 SENATOR PETRIS: That's true.

25 CHAIRMAN LOCKYER: While we're in the housing
26 universe, another area of some controversy has been trying to
27 motivate local agencies to fulfill their obligations to include
28 updated housing elements in their general plans. It's been, I

1 guess, postponed for a couple of years because of budget
2 constraints.

3 Have you had an opportunity yet to involve yourselves
4 in some of the local housing controversies? I guess they
5 include the local elements, whether they should be postponed
6 again, or keep the nudge going. Additionally, at the state
7 level, the various department or agencies that all have a role,
8 and there's been thoughts about consolidating some of those.

9 I don't mean the ones that, perhaps, Senator Kopp
10 talked about earlier, of trimming down your Agency to be a
11 transportation focus, but rather whether the unit in the
12 Governor's Office and HCD, and so on, if there should be some
13 integration.

14 Have there been discussions of those things?

15 MR. DUNPHY: Senator, we have under way a strategic
16 management and consolidation study that's going on in the
17 Agency, because the Agency is undergoing some change.

18 I would expect that as a policy item, the role in
19 adopting and approving housing elements in general plans would
20 either be reinforced or modified.

21 I can't tell you where that direction will go, but
22 they still -- they currently still have the obligation to
23 approve housing elements.

24 CHAIRMAN LOCKYER: There seems to be a lack of vigor
25 from the Housing Department in enforcing local housing element
26 requirements, but I have the feeling you haven't yet involved
27 yourself --

28 MR. DUNPHY: It hasn't come to my attention.

1 Nobody's been pounding on my door.

2 CHAIRMAN LOCKYER: What's the strategic plan? You
3 mentioned that there's some changes in the Agency?

4 MR. DUNPHY: The Department, HCD.

5 CHAIRMAN LOCKYER: Okay.

6 MR. DUNPHY: HCD has a need to re-examine its
7 function and its mission, and size itself appropriately.

8 CHAIRMAN LOCKYER: And that's ongoing.

9 MR. DUNPHY: Yes, sir.

10 CHAIRMAN LOCKYER: When would that maybe be
11 completed?

12 MR. DUNPHY: I don't have the answer to that.

13 CHAIRMAN LOCKYER: They're in the process of doing
14 that?

15 MR. DUNPHY: Yes, sir.

16 CHAIRMAN LOCKYER: I missed, unfortunately I was with
17 the boss, so I missed Senator Kopp's inquiries, but they're
18 fairly predictable.

19 I just wanted to at least mention, and we've had an
20 opportunity to talk about this before, a terrible unfairness
21 that I think is being forced on Bay Area motorists and residents
22 by this and the previous administration. The unfairness in my
23 mind is, how do we finance necessary improvements of a major
24 sort, major improvements, to the bridges in the Bay Area?

25 Recent administrations have followed sort of the path
26 of least resistance, I guess. That is, find some money
27 somewhere; don't try to raise the gas tax, or something that
28 would be controversial. Just go find some money. And the money

1 that sits there is toll revenues, which are continuously
2 appropriated to the Department. They aren't subject to the
3 annual Budget Act.

4 That will change, by the way, next year. There will
5 not be a budget that gets to the Governor unless that changes
6 next year. I've learned now how important it is to just get it
7 out there, make it real clear. Because what happens is, and
8 your Department's done it again, they commit. They encumber
9 tens of millions of dollars of toll revenues for major
10 rehabilitation projects, clearly in violation of the statute.

11 The statute -- I happen to know because I wrote it,
12 and I, frankly, cooperated with Caltrans, to my regret; I won't
13 again, because I took them for their word that when they wrote a
14 distinction minor repair and rehabilitation, that they would
15 observe we know what the difference is. Repaving is minor
16 repair. Rebuilding the girders and cement around it, and so on
17 and so forth, is rehab. That's not a minor repair.

18 But they keep -- driven, I think, by the budget
19 circumstances, and I understand how desperate that makes
20 everybody -- keep skirting that, and trying to commit bridge
21 tolls to projects that should be borne by the Highway Account.

22 Now, the tax effects, separate from the transit
23 effect, is those motorists are double-taxed. They pay their gas
24 taxes like everybody else does, so if you're in San Diego, or
25 San Bernardino, or whatever, the motorist pays gas taxes, and
26 that's used to improve I-5, or what have you. But if you cross
27 this bridge, you pay your gas tax and you pay your toll, and
28 Caltrans expects to use the toll money for repairs of a major

1 sort, rather than the Highway Account. And it's unfair, and
2 it's a form of double taxation.

3 MR. DUNPHY: Senator, one of the problems is, on
4 every state highway in the state where State Highway Account
5 funds are utilized, they have a federal match. So, you get a
6 lot for your money.

7 On the bridges, on the toll bridges, the federal
8 government gives you nothing. So that there's a
9 disproportionate amount of money from the State Highway Account
10 that has to be drawn to those bridges.

11 CHAIRMAN LOCKYER: I understand.

12 MR. DUNPHY: That's a problem.

13 CHAIRMAN LOCKYER: But that's true of a highway
14 somewhere that isn't in the federal system. There are major
15 state highways all over the state. They don't get a federal
16 match, or if they do, it's a modest one. So, you have the same
17 dilemma, but you continue to try at least to program work on
18 some state corridors that are not federal. We always emphasize
19 federal, because the match is desirable, obviously.

20 Well, I mention that. It's very frustrating. It's
21 not your fault, other than, again, it's your policy and
22 emanates, I guess, from the Department of Finance and the
23 Governor's perspectives on funding.

24 Let me mention, while I'm in the same area, another
25 related issue: tolls on roads. We had this demonstration
26 project that was authorized during the Deukmejian era. The
27 bill, unfortunately, was not written with sufficient clarity and
28 specificity, so part of the problem is our bad work. But

1 basically it said, I think, five projects are authorized,
2 several of them, and Caltrans will write the specific contracts
3 for implementing those private toll facilities.

4 The contract that they executed, I think generally
5 the one I know in greater specificity is the proposal that would
6 have run through Contra Costa, Solano and Alameda Counties. It
7 may be the worst piece of legal work I've ever seen. They ought
8 to be hauled off somewhere for malpractice.

9 And there are stories that are told. I'll tell you
10 one.

11 Assemblyman Katz is at lunch with a group of lawyers
12 that are his friends that had nothing to do with this particular
13 contract. But the same firm, a different group of lawyers, was
14 having lunch in the same restaurant. They all managed to
15 intersect and interact, and at the time, these contracts were
16 controversial because they do everything. They confer air
17 rights; they don't make them pay their fair share; they have
18 land use impacts that were never examined; contracting out. It
19 goes on and on.

20 Group Two that represented the Toll Authority, the
21 business consortium that was in the room, is laughing about how
22 they took Caltrans; that the bozos did a bad job of negotiating
23 these contracts. And they're very proud of it, and informing
24 the other group that's with Mr. Katz, from a big law firm in
25 Southern California.

26 Well, that's just the anecdote that runs, and I think
27 a correct one. They did a bad job. They probably won't get
28 this big project in the Bay Area to ever economically make

1 sense, so perhaps it's not a thing to spend time on now,
2 although they keep trying.

3 The contracts, you know, in San Diego and in Orange
4 County were kind of no-brainers. Just add another lane in the
5 median. Even someone in Caltrans could have figured that one
6 out. That's now a toll road in Orange County.

7 I don't know. You may not need to respond, and I'm
8 sorry to sort of rattle on here.

9 MR. DUNPHY: That's okay. Actually, Senator, I enjoy
10 the opportunity, because I think it's at these opportunities
11 that you get to exchange a little philosophy and ideas.

12 And I think the idea of a toll road is one that
13 provides a utility that the state cannot currently provide. So
14 therefore, you're left with the argument of, perhaps, the social
15 equity of creating a facility that is paid for by its users, and
16 perhaps denied to others because of a lack of income.

17 CHAIRMAN LOCKYER: I agree, and that's the
18 fundamental issue in my mind.

19 MR. DUNPHY: Looking at the state today and its State
20 Highway Account revenues, and revenues from all sources to build
21 facilities, we're desperately short. And so, when you can get
22 the private sector to build such a toll road, and it provides a
23 utility that is, perhaps, only cost-constrained, it is a
24 utility. It does revert to the state in its ownership.

25 So, there is a quid pro quo. It certainly has a
26 long-term benefit, and perhaps it has a short-term question.

27 So, you will always have philosophical arguments
28 about that, and I think this is a great opportunity for me to

1 express that.

2 CHAIRMAN LOCKYER: I worry about its reversion is
3 about the time it would wear out, which again raises kind of an
4 economic question.

5 MR. DUNPHY: Yes, but if it is maintained through its
6 35-year life, then it should revert --

7 CHAIRMAN LOCKYER: Be okay, like the Appian Way?

8 MR. DUNPHY: I'm going to have to go visit that.

9 CHAIRMAN LOCKYER: You were almost 25 years in the
10 construction business.

11 MR. DUNPHY: Thirty-two.

12 CHAIRMAN LOCKYER: Was there an emphasis? What kind
13 of construction did you do?

14 MR. DUNPHY: Commercial, industrial, institutional.
15 I built libraries, hospitals. I was a contractor, not a
16 developer. That is, I built for others under contract. It was
17 a wide variety of those kinds of things.

18 CHAIRMAN LOCKYER: What would have been the biggest
19 single job?

20 MR. DUNPHY: Well, it depends on -- I should say I'm
21 proud. I built a number of very large buildings for one of our
22 vanishing industries: General Dynamics. I built probably two
23 or three million square foot of engineering office buildings,
24 manufacturing facilities, in Rancho Cucamonga. I built all of
25 those buildings in Pomona, San Diego.

26 They were a great client, a great industry, and I
27 hate to see 50,000 people go someplace else.

28 CHAIRMAN LOCKYER: Me, too.

1 MR. DUNPHY: But at any rate, that was the kind of
2 experience that I did.

3 CHAIRMAN LOCKYER: You've been in your job since
4 early January?

5 MR. DUNPHY: January, yes, sir.

6 CHAIRMAN LOCKYER: What's been the hardest issue, or
7 the hardest decision so far?

8 MR. DUNPHY: I can't say that there have been hard
9 decisions.

10 I think the thing that I have to get accustomed to
11 first is my interaction with government, the Legislature, budget
12 issues, which I -- the budgets are Byzantine compared to what I
13 went through in running a construction company, and seeking
14 performance, and so forth.

15 There is a learning curve in that regard. However, I
16 feel fortunate that my experiences have included construction,
17 which gives me some familiarity with what goes on at Caltrans.
18 I was on the board of a bank for a number of years, so the
19 banking and S&L side is okay. I was always brought into
20 contract with real estate and real estate appraisal, and so
21 forth.

22 My gross experiences have caused me to feel somewhat
23 comfortable in the position. And fortunately, I've decided the
24 job has to be done from Sacramento, so I've leased a home here.
25 My wife and I have reached a stage in life where she likes to do
26 quilting, and I like to work. So, I stay here and work, and she
27 quilts to her heart's content in San Diego.

28 We have wonderful quality weekends. I go home Friday

1 night, come back Monday morning.

2 CHAIRMAN LOCKYER: We're all familiar with that life
3 style.

4 MR. DUNPHY: It works very well, really, for us.

5 CHAIRMAN LOCKYER: Do you ever get alarmed at what
6 seemed to be the project overhead in some of the major
7 construction projects that Caltrans does? As I recall the
8 figures, state law says no more than 20 percent, and the Analyst
9 and others suggest that maybe it should be at 25.

10 If this was discussed earlier --

11 MR. DUNPHY: It was not.

12 CHAIRMAN LOCKYER: I would assume that as a person
13 from the private sector, you've looked at that; had some
14 thoughts about is it true, is it a problem, what to do about it.

15 MR. DUNPHY: I will repeat the part of the discussion
16 that you and I had in your office, where I believe the greatest
17 challenge that I have is what I term the reformation of
18 Caltrans, and assuring its responsiveness to its task, and
19 finding a 100-year old organization that has developed a culture
20 that's very unique unto itself, that all of its culture and
21 programming are based on historical issues. And the
22 relationship between departments and political appointees is one
23 that the departments, I believe, have a general perception that
24 they can sweat out the appointees until the next one comes
25 along, and they don't change too much.

26 So, clearly, my orientation is to make an impact, to
27 try to make Caltrans a more efficient organization.

28 It is -- I can tell you that following, and even

1 prior to the SRI study, the CTC, the California Transportation
2 Commission, was on Caltrans' case about reducing its support and
3 its overhead. That began at that time, but the SRI report built
4 a fire under everyone, and so that reorganization, creating
5 information networks that talk to one another instead of having
6 48 different independent, stand-alone computer systems, and
7 reorganizing the department so that you can centralize some of
8 the primary functions -- accounting, purchasing, and so forth --
9 and get them -- every district had it before, and the
10 headquarters was acting like a district, doing work, and we're
11 separating that and making it a stand-alone district.

12 And then the Governor insisted on a pay for
13 performance analysis, and trying to get to regulator control, if
14 you will, to permit the reward of folks who do better than
15 others, and to perhaps deny improved salary levels to those that
16 are considered not to be performing. I think that's --

17 CHAIRMAN LOCKYER: Are you doing that?

18 MR. DUNPHY: Yes.

19 CHAIRMAN LOCKYER: How far down the --

20 MR. DUNPHY: It's in the management ranks at this
21 point.

22 CHAIRMAN LOCKYER: Is it contemplated that would
23 extend further?

24 MR. DUNPHY: What the department has volunteered for,
25 and what I would like to do, is to encourage using Caltrans as,
26 perhaps, a model of the reformation of the civil service, so
27 that we can perhaps introduce those kinds of incentives that
28 perhaps differentiate and permit good work to be recognized.

1 It is so difficult within the constraints of all the
2 levels of salary levels, and I can't begin to understand the way
3 that it's fragmented to different levels. And it is so
4 difficult to change, basically, the structure of organizations.
5 They find ways to run sideways.

6 I think the idea of a reform, and using an agency to
7 begin that process, would be worthwhile.

8 CHAIRMAN LOCKYER: It sounds like something you have
9 some enthusiasm for.

10 MR. DUNPHY: I do, and I would encourage you to
11 become interested in that.

12 CHAIRMAN LOCKYER: I'm interested.

13 I'm not persuaded that contracting out, which has
14 been the sort of historic solution or part of it, that it
15 actually saves any money. But we'll debate that at a more
16 appropriate time, with everybody's studies and --

17 MR. DUNPHY: But if you will permit, I just love
18 these opportunities, really, contracting out does a couple of
19 things. And without regard to how much it costs, because I
20 think the accountants haven't settled out on how much what
21 costs. But assuming that they may be similar, the availability
22 of a resource in the private sector gives you an opportunity to
23 create within Caltrans an optimum size staff. And if you get
24 surges in work, you've got the private sector that's trained and
25 skilled that can do that. So, you can actually create an
26 enhanced facility if you have a private sector that has highway
27 and/or bridge engineers contained within its structure.

28 Many of the former Caltrans people, as you know,

1 gravitate into private sector prior to retirement or even
2 sometimes after retirement.

3 It isn't a matter that the skill doesn't exist, but
4 it has to be honed by reuse. So, it provides, again, a utility,
5 so that you can come up with an optimum staffing level for
6 Caltrans and use the private sector for its surge, if you will,
7 of added business.

8 When the surge is over, you're back to an optimum
9 situation.

10 CHAIRMAN LOCKYER: When do you surge? I haven't
11 noticed any.

12 MR. DUNPHY: Northridge, Loma Prieta.

13 CHAIRMAN LOCKYER: Okay, so you mean in times of
14 emergency.

15 MR. DUNPHY: Yes.

16 CHAIRMAN LOCKYER: Not as an ongoing matter.

17 MR. DUNPHY: Well, you have to have a capacity that
18 handles the projects that are required, and those are --

19 CHAIRMAN LOCKYER: A lot. Just bridge review, and
20 there's a whole bunch of people that do that in kind of a
21 routine, ongoing way.

22 MR. DUNPHY: Some of it is done on a routine basis,
23 and I would expect that there will always be. As a matter of
24 fact, the seismic review group suggested that we should always
25 be -- have an ongoing, because you never know where a fault's
26 going to show up. It's just like the Northridge was an unknown
27 fault.

28 CHAIRMAN LOCKYER: Well, there are probably other

1 things. We've taken a lot of time. I, again, find you to be a
2 very, very interesting and pleasant man to work with.

3 MR. DUNPHY: Well, I enjoy the experience, Senator.

4 CHAIRMAN LOCKYER: We'll have you come back
5 regularly.

6 We could talk about the DMV cost overruns, but they
7 mostly predate you. I just note that that is a problem, of
8 course, and you've worked with Mr. Katz and Kopp and others.

9 MR. DUNPHY: Yes, and I might add that you perhaps
10 are aware that the Governor has assigned me the responsibility
11 of reviewing that carefully and determining what actions need to
12 be taken, and I will be doing that in concert with the Attorney
13 General.

14 CHAIRMAN LOCKYER: Anything else, Members?

15 Is there anyone present who wished to make a comment?

16 This is also a confirmation that does not need action
17 until next January, and I'd recommend to the Committee that we
18 take it under submission at least for time, and we'll consult --

19 MR. DUNPHY: I'm a January 4th appointee.

20 CHAIRMAN LOCKYER: Yes, you are.

21 Thank you very much.

22 MR. DUNPHY: Thank you, and I hope you do invite me
23 back.

24 CHAIRMAN LOCKYER: Good luck.

25 [Thereupon this portion of the
26 Senate Rules Committee hearing
27 was terminated at approximately
28 11:00 A.M.]


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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September, 1994.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JANANNE SHARPLESS, Member
State Energy Resources Conservation and Development
Commission

SENATOR HERSCHEL ROSENTHAL

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CHAIRMAN LOCKYER: Ms. Sharpless, if you'll come forward. There is a quorum present.

Let me begin with as good an apology as I can muster here. It's been a horrible day. I guess it's a horrible week and a terrible month.

SENATOR BEVERLY: Not too good a year, either.

[Laughter.]

CHAIRMAN LOCKYER: We've been very --

MS. SHARPLESS: As you know, Senator, I've been here.

CHAIRMAN LOCKYER: I know.

MS. SHARPLESS: I've done this, and I know how it is.

CHAIRMAN LOCKYER: I apologize. I just didn't know what else to do. There were too many other fires burning that needed immediate attention.

I sometimes feel, in a modest way, I understand the Governor's problems when he has 26 emergencies in three years that he has to deal with.

Senator Rosenthal, why don't you start.

SENATOR ROSENTHAL: Yes.

It's my honor and pleasure to introduce to the Rules Committee Jan Sharpless, who the Governor's appointed to the Energy Commission.

It's not often that I've had good things to say about Governor's appointees. Most often I've joined you during confirmation hearings to question the nominees to the Energy Commission, but Jan, in my opinion, is an exceptional person.

1 So, it's an exception to the rule that I've established.

2 For over a decade since I've been Chair of the Senate
3 Energy and Public Utilities Committee, I've had opportunities to
4 work closely with Jan during her tenure as both Secretary of
5 Environmental Affairs, and particularly as Chairwoman of the
6 ARB. During that period, she's been a strong and consistent
7 advocate for the environment. As part of her efforts to protect
8 the environment, she's been a supporter of the clean fuels
9 programs and the energy efficiency programs, which combine sound
10 energy and environmental policies.

11 Jan has a proven record that she's capable of
12 contributing to California's energy future, and in this case,
13 ARB's loss is the Energy Commission's gain.

14 I respectfully urge this Committee to support Jan's
15 confirmation, and I appreciate the opportunity to make this
16 presentation.

17 CHAIRMAN LOCKYER: Thank you very much, Senator.

18 Ms. Sharpless, I think you have a piece of paper.
19 Maybe you want to begin with whatever comments or observations
20 you may wish to make.

21 MS. SHARPLESS: Well, I want to thank Senator
22 Rosenthal, certainly, for those kind words. We have worked
23 together in the past, and I think that the bipartisan effort
24 that we've been able to forge in these areas has been a benefit
25 to the entire state. So, I wish to thank him for those kind
26 words.

27 What I have to say is very short. I just want to
28 indicate that I feel it's a real honor and privilege to be given

1 the opportunity to be able to serve on the Energy Commission,
2 and if confirmed, I look forward to meeting the challenges that
3 face California's energy future.

4 My short time there, I've noticed that, like many
5 other areas in this state, the energy area is faced with many of
6 the same problems: securing and providing reliable and
7 affordable sources of energy to a growing population; providing
8 an atmosphere that allows California businesses to be
9 competitive; and to assure the cost-effective supplies are
10 available, while maintaining a healthy environment.

11 These areas will, as always, require our best efforts
12 as we continue to develop and to implement the creative
13 solutions required.

14 Because of my background and experience in areas that
15 bridge both energy and the environment, I believe I can make an
16 important contribution and would like very much the opportunity
17 to do so.

18 Finally, just a personal note, I am a native
19 Californian. I was born and educated here. This is my place,
20 my home, and it's the place that has given me these
21 opportunities. Consequently, my roots run deep, as does my
22 desire to do whatever I can to contribute to the well being of
23 this state.

24 I wish to thank you for your consideration.

25 CHAIRMAN LOCKYER: Thank you.

26 Did anyone wish to make a comment? I'll certainly
27 entertain those, if members of the audience, other than Senator
28 Rosenthal, who, of course, already has.

1 I'll ask if Members have questions.

2 I'll begin, if I may, just for your thoughts and
3 observations about reorganization, with as much candor as is
4 appropriate for a gubernatorial appointee. Maybe an approach
5 would be your thoughts about the strengths and weaknesses of
6 each of the current structures and systems, and what
7 consolidations or changes might produce something better and
8 why?

9 MS. SHARPLESS: Good. Well, obviously, you've hit on
10 the hot topic in the energy area, and certainly it's been a top
11 priority by agencies, and private sector, and end users that
12 have anything to do with the world of electricity.

13 The issue of bringing more competition to the market,
14 I think, has started way before the debate that we see today.
15 It's been -- being brought to us partially by changes in the
16 federal law, and partially by improvements in technology. And
17 because of these two things, I think competition has been on its
18 way for sometime.

19 But, of course, the problem is, the devil's in the
20 details. The big debate these days is exactly what are the
21 proposals, what do they mean, where will they take California?
22 And there's a variety of very substantive issues that must be
23 dealt with, including what will the industries that are
24 currently monopolies look like when we get through with the
25 restructuring? Will they be integrated; will they be broken
26 apart; will they be service agencies; will they be selling
27 commodities. There's the issue of stranded investment, and who
28 will pay. There's an issue of who's going to control the.

1 distribution and control of the transmission lines. So, there's
2 a number of very substantive issues, along with and including
3 government's role.

4 I think the efforts that we've been seeing have
5 certainly generated a lot of momentum of discussion in this
6 area. The Energy Commission, as you may or may not be aware,
7 has been involved in the PUC process and has put comment out.
8 Our role in that process has been trying to clarify the issues,
9 to identify some of the problems that we see, and to suggest
10 some remedies.

11 The suggesting of the remedies at this point have
12 basically been focused on what is it that we're trying to
13 accomplish? And that is, is it the reduction of rates, the
14 reduction of bills, bringing consumers a greater selection of
15 services at more competitive prices, making the system more, as
16 the economists like to call it, economically efficient, which is
17 something we really support.

18 A lot of talk right now is over pooling; pooling of
19 resource so that an independent, or some type of organization,
20 will be able to determine how to deal with the distribution and
21 access to transportation -- rather, excuse me, transmission
22 lines. So, we're very much involved in that.

23 We believe --

24 CHAIRMAN LOCKYER: Are your thoughts reflected in the
25 comments at the PUC?

26 MS. SHARPLESS: Yes, they are very much so, and very
27 actively involved. We've been concerned about the progress
28 that's been made in the State of California for energy

1 efficiency, for energy diversification, and for technology
2 development. With all those public goods, societal goals, the
3 concern is what happens under a competitive scenario with those
4 programs.

5 CHAIRMAN LOCKYER: And you're worried about what
6 happens essentially to those activities that have received some
7 subsidy under the current system through ratepayers?

8 MS. SHARPLESS: They have been, yes. The rates do
9 reflect programs that have enhanced and encouraged energy
10 efficiency.

11 On the other side of the equation, you have to look
12 at the benefits of the program. Those programs, for the most
13 part, have benefitted the ratepayers. For instance, energy
14 efficiency has benefitted the ratepayer by avoiding additional
15 construction of unnecessary power plants. That is a savings.
16 Some of those things happened more short-term; some of those
17 things happened more long-term.

18 Certainly in the area of research and development,
19 California leads the way in research and development. That's
20 allowed us to diversify our system. Back in the '70s, we were
21 dependent by 33 percent on foreign oil. We are now -- the
22 structure in California now is about 90 percent from California
23 and other states, 10 percent from Canada and Indonesia.

24 So, the technology development has allowed for
25 diversification, and it has increased the security and
26 reliability of our system. Someone has paid, but someone has
27 also received the benefits of those programs.

28 Under a competitive scenario, we have to decide not

1 to jettison those objectives, which I think have proven to be
2 very --

3 CHAIRMAN LOCKYER: Restate those? You had technology
4 development and --

5 MS. SHARPLESS: We had energy efficiency. We've had
6 technology development and energy diversification.

7 Energy diversification ties back into energy
8 efficiency and technology development, because they often
9 support one another.

10 But those are the three major goals. And of course,
11 not to forget, and include the fact that the law also provides
12 that environmental costs and benefits be factored into resource
13 planning. And that's another reason why so many renewable
14 resources, and cogeneration facilities, have been able to be
15 sited here in California, because they are environmentally
16 preferable from an air quality standpoint.

17 CHAIRMAN LOCKYER: Of the tasks that someone has to
18 address -- the development of new energy, the shift to the more
19 competitive marketplace, the planning, conservation efforts --
20 are there functions there that are more appropriately PUC or
21 Energy Commission in your mind?

22 MS. SHARPLESS: Well, the Energy Commission has
23 always been the principle planning and policy making
24 organization for statewide energy policy.

25 CHAIRMAN LOCKYER: Do you think it should stay there,
26 or should it shift to the PUC?

27 MS. SHARPLESS: Judging from -- you know, just
28 looking at the different mandates of the different

1 organizations, and how they're set up, obviously the CEC was set
2 up to do that very task. And I think that the history, 25-year
3 history, has proven that it has done that job very well.

4 The PUC really has a multitude of tasks, and
5 electricity regulation is only one. And it really doesn't look
6 at, you know, the broad range policy. And energy is bigger than
7 just electricity. It involves transportation; it involves fuel
8 supply and demand; it involves electricity, of course; it
9 involves natural gas resources. So, it's really the bigger
10 energy pie.

11 CHAIRMAN LOCKYER: So you would obviously argue that
12 separateness is appropriate.

13 MS. SHARPLESS: Yes, under -- you know, we have to
14 see what happens under the competition scenario. I would say
15 yes to that question. What government's roles, how they will be
16 redefined under a competitive scenario, I think, is going to be
17 one of the issues that definitely this body and those who are
18 currently under discussion will need to consider.

19 But in terms of an overall energy --

20 CHAIRMAN LOCKYER: What are the choices that we're
21 going to have to make, the government's role?

22 MS. SHARPLESS: I think it depends on how the
23 restructuring is defined. I think it depends on what happens to
24 the current utilities; what they look like; what their roles are
25 going to be; whether there's going to continue to be core
26 service. There's just a variety of questions and answers that
27 have to be addressed that will then spin off as to what the
28 government role will be.

1 I don't mean to be evasive, but it's kind of a
2 difficult question to answer without knowing what the
3 structure's going to look like.

4 CHAIRMAN LOCKYER: And that's really more of a PUC
5 venue?

6 MS. SHARPLESS: No, because the PUC, as you know,
7 only regulates investor-owned utilities. It doesn't regulate
8 the municipalities. Its proposal currently is only directed at
9 investor-owned utilities.

10 Thirty percent of the electricity out there is
11 supplied by municipalities. So, municipalities have to be
12 brought into this proposal right now, and that is not under the
13 PUC purview.

14 CHAIRMAN LOCKYER: That's where the Energy Commission
15 comes in, or whom?

16 MS. SHARPLESS: That's where we all come in, I think.
17 The table has to have everybody represented, and right now, not
18 everybody is.

19 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

20 SENATOR AYALA: As you well know, state and federal
21 laws call for an increased use of alternative fuels for
22 transportation, such as methanol and ethanol, and natural gas,
23 and electricity.

24 What problems or barriers stand in the way of a shift
25 to a more economically and environmentally sustainable
26 transportation fuel future, and how can the barriers be
27 overcome?

28 MS. SHARPLESS: This is barriers to bringing

1 alternative fuels into fleets?

2 SENATOR AYALA: Promote and increase the use of these
3 alternatives for better clean air.

4 MS. SHARPLESS: In fleets? Is this directed at how
5 do you do it in fleets?

6 SENATOR AYALA: What's standing between attaining
7 that goal of using more alternative fuels, and how do we
8 overcome that barrier?

9 MS. SHARPLESS: Yes, well, as you know Senator,
10 that's something that I've worked on for quite a few years.

11 I think that if you look at fleets, there is -- some
12 people say that there is an easier, that's an easier market to
13 penetrate than the general public, when you're trying to bring
14 alternative fuels into the market.

15 One of the problems with alternative fuels, of
16 course, is the fuel supply. And until there is a more
17 diversified fueling system out there, people naturally become
18 concerned about where they're going to buy their fuel and how
19 much it's going to cost. And it's a supply and demand kind of
20 problem. Until you get a larger supply, the demand, you know,
21 the demand means that costs are going to be high. You need to
22 increase your demand in order to make it more cost-effective.

23 So, that's one of the reasons why, in the alternative
24 fuel area, people have looked at fleets, because they're sort of
25 a captured market. You can do central fueling. The distance
26 that people drive is more constrained and confined. And as you
27 build a greater demand through the market system, then the
28 fueling system will follow, and then you'll be able to bring

1 more alternatively fueled vehicles into a larger market.

2 But it really has been the chicken and the egg,
3 seriously. That it's very difficult to bring alternative fueled
4 vehicles in if there's not an adequate supply out there. And of
5 course, without an adequate supply, it means that your costs are
6 going to be high, and then you're competing an already
7 established conventional fuel. And people who are in business,
8 obviously, are concerned about cutting margin and making profit.
9 So, that becomes a difficulty.

10 I was on the President's Federal Fleet Program, and
11 was back there as a California representative, trying to
12 overcome some of those barriers that you've mentioned. And I
13 think that they're making slow progress.

14 SENATOR AYALA: Are we premature because of lack of
15 information, or education on the part of the general public, to
16 view alternative fuels? A lot of people really don't know what
17 they are and where they can obtain them.

18 Is that part of the problem, that we've got to
19 somewhat educate the driving public to these new alternative
20 fuels?

21 MS. SHARPLESS: The kind of questions that you and I
22 ask when we go in to buy a vehicle, of course, is: how much
23 added cost is this going to be; how much more is the fuel going
24 to be; will I be able to resell my vehicle. It's kind of basic
25 questions.

26 The cost of the vehicle, depending on what type of
27 fuel it's using, there is an incremental increase, of course, in
28 cost. And if people are concerned about not being able to find

1 the fuel, or if they can find the fuel, it's going to be a lot
2 more expensive, it becomes a market barrier. It becomes a
3 detriment.

4 So, one of the ways that you do that is, you take it
5 to the niche where you think that it has the greatest
6 practicability, and then try to build the supply.

7 I think eventually there are niche markets here, and
8 I think eventually alternative fuels will find their way into
9 the market, but it does take time; it does take education.

10 SENATOR AYALA: When you say "eventually," what are
11 we talking about? Fifteen years?

12 MS. SHARPLESS: No, if you look at the federal fleet,
13 if you look at the energy program, the federal energy program,
14 the Congress and then the President accelerated that timeframe,
15 you're looking at -- I can't give you the percentages -- but
16 exact percentages were laid out in that legislation, in that
17 statute, and by the President's Executive Order to be met by the
18 federal government, and to be met by states. So, you will be
19 seeing greater penetration.

20 SENATOR AYALA: I don't see a mass movement on the
21 part of the driving public to go to these kind of fuels yet.
22 There's one there, but not much interest so far.

23 MS. SHARPLESS: Well, one of the things that happened
24 is that we established a fuel neutrality policy when we
25 developed the low emission vehicle program. And by doing that,
26 we didn't designate what fuel would be the winner.

27 Obviously, the petroleum companies have come forth
28 with a reformulated gas that, in combination with cleaner

1 technologies, have been able to come in and compete with those
2 alternative fuels.

3 So, it hasn't been as fast as some people originally
4 thought it would happen when we adopted the LEV program, but I
5 definitely think that there's going to -- natural gas has an
6 obvious niche market, and there's going to be a great
7 penetration of natural gas vehicles. There will continue to be
8 some methanol vehicles, although not as great a penetration as
9 we thought originally. I think natural gas is going to --
10 you're going to see a lot of that, though, coming into the
11 fleets, and, of course, electricity where it's appropriate.

12 SENATOR AYALA: Thank you very much.

13 CHAIRMAN LOCKYER: We heard a lot about the fuel
14 neutral policy on Monday.

15 MS. SHARPLESS: I was here.

16 CHAIRMAN LOCKYER: You've mentioned alternative fuels
17 and technologies that would impact air pollution problems.

18 Is there anything else that the Energy Commission
19 could or should consider doing to address air pollution?

20 MS. SHARPLESS: The law requires, of course, this
21 agency to include environmental impacts into its resource
22 planning, so that is very much a part of what the Energy
23 Commission does, both in the electricity area, where we identify
24 the environmental costs and benefits of different technologies
25 and incorporate them in our resource planning, and also we're
26 very much involved in the technology development of renewable
27 resources: biomass, wind, cogeneration. So, that very much
28 supports that effort, as well as on the transportation side.

1 We're very much involved and cooperate with the air quality
2 agencies on research and technology demonstration projects for
3 alternative fuels. So, we've sort of been through that.

4 CHAIRMAN LOCKYER: Are there additional questions?

5 Senator Craven, I'd recognize you for a motion on the
6 matter.

7 SENATOR CRAVEN: Very good, I move.

8 CHAIRMAN LOCKYER: All right, the motion to recommend
9 confirmation to the Senate.

10 Call the roll, please.

11 SECRETARY WEBB: Senator Ayala. Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Beverly Aye. Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye. Senator Craven.

16 SENATOR CRAVEN: Aye.

17 SECRETARY WEBB: Craven Aye. Senator Lockyer.

18 CHAIRMAN LOCKYER: Aye.

19 SECRETARY WEBB: Four to zero.

20 We might put it on call so Senator Ayala can vote
21 when he returns.

22 MS. SHARPLESS: Thank you very much.

23 CHAIRMAN LOCKYER: Good luck.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 1:00 P.M.]

28 --oo0oo--


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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September, 1994.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DEAN R. DUNPHY, Secretary
Business, Transportation and Housing Agency

JOANNE C. KOZBERG, Secretary
State and Consumer Services

SENATOR DAN BOATWRIGHT

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We have two confirmations. First is Mr. Dunphy as Secretary of Business, Transportation and Housing.

I will mention, of course, Senator Lewis wasn't with us at that time, but we did have a hearing and discussion, and a very interesting exchange, including your notes to yourself.

Let me just say thank you for your willingness to reappear briefly. Mostly, I think, we'll ask, unless you would have something else to add to your prior testimony, Mr. Dunphy, we'll ask you to just say hello and ask Members if they have questions or concerns.

MR. DUNPHY: I would consider that my good fortune if we did not review the entire one hour previous testimony, thank you.

CHAIRMAN LOCKYER: Any Members on this? Senator Petris.

SENATOR PETRIS: There have been a couple new developments since you were here before us last, and they affect me, so I thought I'd ask you some questions.

I was startled to read in the press the other day that CalTrans is moving to eliminate BCDC, and I've been targeted to carry the bill to do that.

Now, that's either a nasty joke, or somebody doesn't have a good sense of humor, since I was the author of BCDC, and I feel it's an excellent agency. I have no intention of carrying that bill, and if it's introduced, I intend to oppose

1 it very strongly.

2 What is CalTrans' problem with BCDC? Can you speak
3 to that? I know you're not directly at CalTrans, but you're the
4 Super Agency Director.

5 MR. DUNPHY: I think that the subject first is in a
6 proposal stage, which being a proposal between the Agency and
7 the Governor, is not one that I can comment on specifically.

8 However, I would be happy to --

9 SENATOR PETRIS: Do you mean they bypassed you and
10 went directly to the Governor?

11 MR. DUNPHY: No, it came through my office, but
12 because of the nature of the relationship between the Agency and
13 the Governor's Office in a proposal stage, I'm not -- there is
14 no policy, so I'm not able to comment on it.

15 But I would be so bold as to volunteer the thought
16 that BCDC, authored by yourself, performed a valuable function
17 in the saving of the Bay tidelands, the development of a plan
18 which was adopted, I believe, in '69, which guided the way in
19 which the Bay would be developed, saving it from landfill,
20 quality of water, et cetera.

21 But as we go through our life in government and in
22 private enterprise, we find that the overlapping and increasing
23 layers of what you might refer to as bureaucracies -- of the
24 local government, state government, and regional government
25 having to pass on various issues -- it tends to be a burdensome
26 problem to the accomplishment of objectives, and taking a great
27 deal of time to indeed do things which could be done more
28 quickly by local government and/or, in this case, by the

1 California Coastal Commission.

2 So, I think we're all conscious, particularly as our
3 economy becomes more strained, to endeavor to reduce the
4 layering of approvals and their processes. And I think that
5 that is probably at the heart of the suggestion.

6 SENATOR PETRIS: Well, the way I see it, that has
7 some flaws in it.

8 First of all, BCDC is probably the most prominent of
9 all state agencies that require local government representation
10 on it. There are members of boards of supervisors serving on it
11 by virtue of the fact that they have a local office, and members
12 of city councils. It's a very large body. It includes
13 Governor's appointees, but it also includes these other people
14 for that very purpose.

15 It's also the first agency in the history, that I
16 know of, in the state that requires them to act promptly on
17 applications. If they don't act within 30 days, whatever
18 application is involved is deemed to be approved. So, they
19 can't just sit around and stall it like so many other agencies
20 do, either purposefully or through inefficiency, and so forth.

21 So, that's the reason I'm expressing a concern. It's
22 not only the fact that I was the author. I'm proud of that, but
23 it's the fact that I think there is still continuing need to do
24 that and to keep local government directly involved, rather than
25 just having a passive view of the thing.

26 Now, the only problem of the kind you mentioned that
27 was covered in the press account, there may be others, maybe you
28 can enlighten us on what the other problems are with the fly

1 over on Cypress along the east shore of the freeway, connecting
2 up to San Francisco. I strongly supported CalTrans in that, and
3 I opposed BCDC. And I say that because I have maintained a
4 fairly independent outlook. When other issues arise, usually I
5 find myself coming down on the side of BCDC, especially on the
6 conservation issues. On that one, I strongly supported
7 CalTrans.

8 I would think, having won that fight, they could walk
9 away from it and not turn around and ask for the abolition of
10 the agency. That smacks of a little bit of peevishness on the
11 part of CalTrans.

12 Are there other major obstacles in the way of
13 CalTrans that have been presented by BCDC, or is it just the
14 layering?

15 MR. DUNPHY: I think it's basically the layering, and
16 that issue, as you know, was a very contentious one, and it had
17 a great deal to do with getting the Cypress Freeway underway, it
18 being a very early first contract that was needed. And I would
19 probably agree that there was a certain amount of angst
20 associated with that.

21 CHAIRMAN LOCKYER: I should point out, Senator, this
22 Committee's appointee to BCDC voted against us, those of us who
23 urged him. Perhaps we ought to review that, and some of the
24 blame falls on our own appointees.

25 SENATOR PETRIS: Could be. I think we ought to
26 revisit that.

27 I have some other areas I wanted to ask about.

28 CHAIRMAN LOCKYER: If I may --

1 SENATOR PETRIS: Yes, you go ahead.

2 CHAIRMAN LOCKYER: There was a recent press
3 discussion, legislative hearings, and considerable turmoil
4 associated with sexual harassment problems alleged in CalTrans.
5 I guess there's been investigations, claims of white-wash, and
6 cover-up, and so on.

7 What would you contemplate now, if anything, to
8 maintain some objective and impartial, fair evaluation of the
9 contentions that there are problems?

10 MR. DUNPHY: Well, I suppose there are two issues.
11 First, there is the District Nine, which is Bishop, which caused
12 the attention, press attention.

13 And separating that for the moment, CalTrans has a
14 fairly energetic program of training. They have spent several
15 million dollars on training and sensitizing folks to a changing
16 culture and environment that is necessary and appropriate. I
17 think they are doing a reasonable job in that regard.

18 The issue, then, turning to district Nine, is one
19 that has a history of several years. As you may recall from
20 some of the testimony, one of the witnesses, or one of the
21 persons questioned had to deal with an issue that was a number
22 of years old. And I strongly suspect that historically, as a
23 department changes, there are 75 male percent in CalTrans,
24 females 25 percent. But as the evolution of the effort to make
25 it more accommodating to all persons of all types and sexes, et
26 cetera, that you're going to have isolated instances of people
27 who have not paid attention to the training. And where you have
28 18,000 persons employed by the department, it's perhaps not

1 unexpected you're going to have a renegade that's going to give
2 you a problem.

3 But their training program is fairly discreet and, I
4 think, effective. So that what we have to do is make sure that
5 it maintains its effectiveness and to eliminate these other
6 activities.

7 CHAIRMAN LOCKYER: Do you contemplate any Agency
8 level review, investigation, or action with respect to the
9 District Nine problems?

10 MR. DUNPHY: I, as the Secretary, will demand of the
11 Director a full explanation of what is to transpire as a result
12 of that activity.

13 CHAIRMAN LOCKYER: Has he offered that yet, the
14 Director?

15 MR. DUNPHY: Not to my knowledge, sir.

16 CHAIRMAN LOCKYER: There's some suggestion that maybe
17 the complaint has been filed before the federal EEOC, and that
18 they might be an independent reviewer. That seems sensible to
19 me. I hope if there's anything the Agency needs to do in the
20 way of assenting or permitting that re-examination, that might
21 be a way to do it.

22 MR. DUNPHY: They'll have our full cooperation and
23 encouragement.

24 CHAIRMAN LOCKYER: Senator Petris.

25 SENATOR PETRIS: Thank you, Mr. Chairman.

26 Now that we've covered CalTrans' desire to abolish
27 BCDC, I find the report here from the Stanford Research
28 Institute International that says, among other things, that

1 CalTrans, quote:

2 "... cannot be managed effectively with
3 the present lack of policy direction, lack
4 of flexibility, lack of performance
5 measures, and ineffective system of reward
6 and disciplinary procedures."

7 That's a rather severe criticism of management style at
8 CalTrans. So, we're looking for answers to that.

9 I wonder if you're familiar with that report? It
10 came out this year.

11 MR. DUNPHY: Yes, I am.

12 SENATOR PETRIS: It also recommended a constitutional
13 amendment to separate some of the functions out of the overall
14 Agency, and to increase efficiency, put them somewhere else;
15 separate them from Business, Transportation.

16 I'd like to have your reaction, number one, whether
17 you agree with some of the criticism, and what plans you have
18 for correcting the situation if you agree that they're valid.
19 If not, we'll go on to the next question.

20 MR. DUNPHY: Well, I would -- I received that report
21 on behalf of the Governor, I believe it was in February of this
22 year.

23 The Director of CalTrans, General Van Loben Sels,
24 received it from me, and had agreed, even before the report was
25 made public and finalized, that significant corrections were
26 needed in the Department relative to performance, et cetera.

27 Relative to the SRI recommendation that
28 Transportation be made a separate agency, and the other

1 regulatory activities put into either another agency or
2 distributed, I personally disagree with that recommendation, but
3 I can also go further and try to identify, if I can, the origin.

4 At the time that that report was both requested and
5 being developed, I was a member of the California Transportation
6 Commission. At that time, the Agency included Trade and
7 Commerce in the beginning of my term. It was a very broad-based
8 Agency with many activities, such to the extent that
9 Transportation was not given the interest and attention that I
10 believe I am bringing to the Agency.

11 Since my arrival, I was successful in having the
12 administration approve the appointment of an Under-Secretary so
13 that among the various agencies I have, I have the only two
14 Under-Secretaries of agencies, one of which is the
15 Under-Secretary for Transportation. And I have dramatically
16 increased the attention and oversight of CalTrans by virtue of
17 that activity.

18 Because of my own prior interest, I served as
19 Chairman of the Board of the San Diego Transit Corporation for
20 five or six years prior to joining the California Transportation
21 Commission, and prior to that I was a building contractor,
22 commercial building contractor in San Diego. So, I have a
23 transit background. I have an interest in the economic
24 potential of the highway system, and because of my service on
25 the Transportation Commission, I understand the importance of
26 multi-modal systems, transit, throughout the state. That is
27 highways, rails, short urban commuter, inner city, et cetera,
28 and the development of the ports.

1 So, I believe that I'm able to bring a focused
2 attention to transportation, while at the same time within the
3 Agency, I have ten or eleven other departments that are
4 basically regulatory in nature -- the Department of
5 Corporations, S&L, State Banking, et cetera -- which are handled
6 by the Under-Secretary. And because they are not quite the
7 lighting rod of some of the other activities, I believe that
8 I've been able to express a competence in that management
9 oversight.

10 The alternative would be to set up either a separate
11 agency or find another home for the other regulatory
12 departments. I just believe that the Governor is well served,
13 and the Legislature is well served, by my managing those in one
14 agency.

15 So, I do disagree with that.

16 Now, not trying to avoid your other question about
17 the need for reform, one of the cards that I carry with me, that
18 Senator Lockyer refers to frequently, has to do with a reform of
19 CalTrans. Several months ago, when you asked me what my most
20 important objective is, I said that it is indeed the reformation
21 and/or transformation of CalTrans in making it a more
22 user-friendly, efficient, smaller organization that can perform
23 under more limited, efficient circumstances.

24 As you're aware, I think we're all aware, of the fact
25 that transportation revenues have been on the decline for a
26 variety of reasons, and yet the need for expanding capacity of
27 highway, and then providing alternative transit by way of rail,
28 commuter rail, et cetera, all of those are growing. So, we have

1 to be better managers and more efficient.

2 Because there is not much appetite for increasing
3 revenues through taxes, we have to first attack it through
4 efficiencies, and that Department has to be at the center of
5 that activity. And I am spending a great deal of time on it,
6 and I do want to give General Van Loben Sels credit for having
7 instituted a number of changes already which are improving it.

8 But I also want to take this moment, however, to
9 recall your first comment about the SRI report, which said that
10 it's important to do a couple of things strategically and
11 structurally that permit the Department to be more effective.
12 One of those is a constitutional amendment to permit contracting
13 out. The private sector has a great capacity to deliver
14 product, whether it be engineering or constructing, the private
15 sector has been the constructor of freeways, et cetera. But
16 because of court interpretations, which are currently being
17 challenged, the Department has been denied the opportunity to
18 have private sector engineers to design work, and is under an
19 edict now to reduce that amount.

20 I think that's very important and has far reaching
21 implications for the rest of state government.

22 CHAIRMAN LOCKYER: Mr. Dunphy and colleagues, I want
23 to remind you that, unlike the normal day when Rules is meeting,
24 and they aren't waiting for us on the Floor, they are waiting
25 now. We can't do anything about that, other than let the
26 appointments die, which is okay with me, but it's not something
27 I'd recommend.

28 I just want all of you to be aware that we have some

1 time constraints because we're acting at the same time that
2 Senators are milling around, moving vacancies on the Rules
3 Committee and such.

4 An update for those that haven't been in front of the
5 television, 40-40 is the current score in the Assembly.

6 Senator Petris

7 SENATOR PETRIS: We won't be meeting again on this
8 because we're up against a deadline.

9 CHAIRMAN LOCKYER: This is it, unless we ask the
10 Governor to withdraw the nomination and resubmit it, or
11 something like that.

12 SENATOR PETRIS: Is that possible?

13 CHAIRMAN LOCKYER: It is.

14 SENATOR PETRIS: I thought there was some legal
15 obstacle to that.

16 CHAIRMAN LOCKYER: No, he can do it.

17 SENATOR PETRIS: The problem is, we have a lot of
18 good questions that need to be addressed, I think: earthquake
19 repairs, and other things which are mostly CalTrans.

20 Maybe we should ask CalTrans to come in as well.

21 I don't feel comfortable bringing out this criticism
22 of CalTrans. There's a building in my district, a beautiful
23 12-story office building, that has my name on it, and it's a
24 CalTrans building. So, it's difficult for me to give publicity
25 to any criticism of CalTrans' effectiveness and efficiency.

26 I will tell my colleagues that when that building was
27 dedicated, the CalTrans representatives and the private
28 builder's representative, a big company from L.A., both

1 SECRETARY WEBB: Lewis Aye. Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Petris Aye. Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 SECRETARY WEBB: Five to zero.

6 CHAIRMAN LOCKYER: Place the matter on call briefly.
7 Thank you, sir.

8 Ms. Kozberg, welcome back. Did you want to begin
9 with any observations or comments, an update from your previous
10 discussion?

11 MS. KOZBERG: No, in the interest of your time, I'd
12 be very happy to answer your questions directly.

13 CHAIRMAN LOCKYER: Are there questions from Members?
14 Senator Boatwright.

15 SENATOR BOATWRIGHT: Yes, Mr. Chairman, Members.

16 Just very briefly, I have oversight, incidentally, on
17 CalTrans. I would invite you people to come to my Subcommittee
18 4, because I have their budget. I tried to do some of the
19 efficiencies, and they were vetoed. I invite you to come to my
20 subcommittee when it's heard.

21 I am here to speak for Ms. Kozberg because I believe
22 that she's going to bring something to this job, and she has
23 already, and that is a willingness to work with the Legislature.
24 I found in her previous position and in her current position
25 that I believe she wants to follow the law, to do things that
26 are right.

27 I don't always agree with everything that's done, but
28 as long as they do things according to the law, that's okay with

1 emphasized the fact that this building was brought ahead of
2 schedule and under budget. Whereupon, I replied that that's the
3 secret. This is the dawn of a new era. If you want public
4 projects to come up ahead of time and under budget, you name
5 them after a flaming liberal.

6 [Laughter.]

7 SENATOR PETRIS: I'll withhold any further questions.

8 SENATOR AYALA: I have a short question.

9 Does CalTrans have a policy that pertains to sound
10 walls?

11 MR. DUNPHY: Yes.

12 SENATOR AYALA: Can I have a copy of those policies?

13 MR. DUNPHY: Yes, sir.

14 SENATOR AYALA: Thank you.

15 MR. DUNPHY: We are spending about \$10 million a year
16 on the installation of sound walls, and they are effective.

17 CHAIRMAN LOCKYER: Other comments or questions?
18 Senator Beverly.

19 SENATOR BEVERLY: If you're ready for a motion, I
20 move that we recommend confirmation.

21 CHAIRMAN LOCKYER: The motion is properly before us.
22 Call the roll, please.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Beverly Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 me.

2 I'm also confident that she recused herself in the
3 matters involving the California Museum of Science and Industry.
4 Senator Petris, myself, Senator Alquist were probably the
5 leading foes as to what has happened down there. I don't agree
6 with what's happened, but I do believe that she has conducted
7 herself honorably, and I would urge her confirmation.

8 CHAIRMAN LOCKYER: Thank you, Senator.

9 Questions from Members?

10 Maybe I could begin with just a quick one.

11 I remember sort of a correspondence blizzard of
12 various folks that were involved in something that was beyond my
13 expertise, other than recognizing there was some dispute. It
14 had to do with the building codes standards, and different
15 organizations that used to, I guess, for 30 years or something,
16 jointly prepare these codes for the Building Standards
17 Commission.

18 Has that been worked out? Have you been able to
19 effectuate a meeting between the different --

20 MS. KOZBERG: We are -- all the parties are meeting
21 on December the 8th, and we are going to try and bring all
22 parties to work together.

23 CHAIRMAN LOCKYER: Should we vote on December 9th?
24 Do you feel pretty confident about bringing this off?

25 MS. KOZBERG: I think so, because there are a number
26 of issues beyond just the publishing of codes that we need to
27 get to, and especially if we're moving into a whole new
28 technology where local government will become in partnership, we

1 all do need to work together.

2 CHAIRMAN LOCKYER: I guess I'm obligated on advice of
3 counsel to indicate that our confirmation votes never have
4 anything to do with your administrative duties or actions.

5 Senator Petris, did you have anything here?

6 SENATOR PETRIS: Yes, I wanted to touch briefly on
7 what Senator Boatwright said. I was one of those who was active
8 in the Museum of Science and Industry.

9 What is the current plan?

10 MS. KOZBERG: Senator, I could have Under-Secretary
11 Ann Sheehan come and speak to you about that. I am recused on
12 that issue.

13 SENATOR PETRIS: Is she here now?

14 MS. KOZBERG: I believe she has a smog check meeting
15 now.

16 SENATOR PETRIS: On her car or somebody else's?

17 [Laughter.]

18 MS. KOZBERG: On the state program, Senator.

19 SENATOR PETRIS: Can you tell us what her program is
20 with respect to this?

21 MS. KOZBERG: Senator, I'm not knowledgeable about
22 that. I am recused on the Science and Industry Museum, but I
23 could make sure that the Under-Secretary sees you immediately.

24 SENATOR PETRIS: I think I met with her once before.
25 Is her word the official word?

26 MS. KOZBERG: Senator, I'm not knowledgeable about
27 the Museum of Science and Industry.

28 SENATOR PETRIS: That's my problem. I think if you

1 had been, we may not have the problems we have.

2 Well, okay.

3 CHAIRMAN LOCKYER: Other Members? Senator Beverly.

4 SENATOR BEVERLY: I move we recommend confirmation.

5 CHAIRMAN LOCKYER: All right, we have an appropriate
6 motion made. Call the roll, please.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Petris. Senator
14 Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Four to zero.

17 CHAIRMAN LOCKYER: Leave it on call briefly.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 1:42 P.M.]

22 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of December, 1994.


EVELYN J. MIZAK
Shorthand Reporter

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